

## MASTER SERVICES AGREEMENT

### STATE OF KANSAS

CUSTOMER's Legal Name		Doing Business As	
900 SW Jackson, Room 102N	Topeka	KS	66612
Street Address	City	State	Zip Code
State Government	Kansas	Tax Exempt	
CUSTOMER's business organization type (corporation, LLC, partnership, non-profit or other entity)	State of Organization	Taxpayer Identification Number	
Connie Schuessler, Procurement Officer IV	785-296-7240		
Recipient/Title For Notices	Facsimile Number		

This Master Services Agreement ("MSA") is by and between the CUSTOMER identified above and FIRST DATA SERVICES, LLC ("FDS") for the Services identified below:

The intent of this MSA is to provide one set of standardized general terms and conditions to be utilized for multiple relationships within the United States between CUSTOMER and FDS and/or third party providers who enter into addenda to this MSA with CUSTOMER (each of FDS and such third party providers are referred to as a "PROVIDER") for all services provided by them. Each Addendum to this MSA ("Addendum" and collectively, the "Addenda"), whether entered into concurrently herewith or hereafter, will contain terms, operational descriptions, specifications and associated pricing specific to those services contemplated thereunder ("Services"). Each Addendum will be subject to this MSA unless the applicable Addendum provides that additional and/or other terms and conditions apply. Except to the extent otherwise expressly set forth in this MSA or an Addendum, references to this MSA shall be deemed to include each Addendum and references to each Addendum shall be deemed to include this MSA. For purposes of each Addendum, (i) the PROVIDER(S) thereunder will become parties to this MSA upon execution of such Addendum as if such PROVIDER(s) had physically executed this MSA, (ii) the terms of this MSA shall apply separately to each Addendum and the PROVIDER(s) thereunder; provided, that to the extent more than one PROVIDER enters into an Addendum, and unless that Addendum expressly provides otherwise, (a) each such PROVIDER'S obligations shall be joint, but not several, and (b) each such PROVIDER shall have separate but equal rights against the CUSTOMER. No PROVIDER shall be obligated to, or have any rights against, the CUSTOMER under any Addendum to which it is not a party.

In consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, FDS and CUSTOMER agree as follows:

**1. Services; Recitals; Definitions.** The Services subscribed to concurrently herewith shall be more fully described in the following Addenda: Other Card Services Supplement to Merchant Services Bankcard Addendum and Attachment II Debit Transactions Supplement to Merchant Services Bankcard Addendum and Attachment III; Equipment Purchase and Rental Supplement to Merchant Services Bankcard Addendum.

As used in this MSA, capitalized terms not defined herein will have the meaning set forth in Annex 1.

**2. Term.**

2.1 This MSA, and each Addendum, shall (i) be in effect upon complete execution of each such document, and each such document shall remain effective through the initial term of five (5) years from the date of this MSA unless otherwise specified in an Addendum and (ii) automatically renew for successive one (1) year terms until terminated by the parties thereto upon one hundred and twenty (120) days' notice prior to the end of the then existing term. This MSA shall remain in effect until all Addenda are terminated at which time it shall terminate automatically.

2.2 This Subsection 2.2, Sections 3-5, 7, 9, 11-19 and Subsection 10.2 will survive termination of this MSA.

2.3 PROVIDER shall provide CUSTOMER with an account credit up to twenty thousand dollars (\$20,000.00) for the cost of replacing its equipment. In the event that the Agreement is terminated for any reason prior to the end of the Initial Term, and termination is not the result of a contract breach by PROVIDER, CUSTOMER shall pay PROVIDER an amount equal to a pro rata portion of this amount determined by (a) multiplying by a factor of .01666 (b) the number of months, including any partial month, between the last day of the initial term and the effective date of termination of the Agreement; then multiplying the product of (a) "times" (b) by (c) the total amount of the received by CUSTOMER prior to such termination.

**3. Financial and Other Information.**

3.1 CUSTOMER agrees to provide PROVIDER quarterly financial statements of CUSTOMER within forty five (45) days after the end of each fiscal quarter and annual audited financial statements within ninety (90) days after the end of each fiscal year. Such financial statements shall be prepared in accordance with U.S. generally accepted accounting principles. CUSTOMER also shall provide such other financial statements and other information concerning CUSTOMER's business and CUSTOMER's compliance with the terms and provisions of this MSA as PROVIDER may reasonably request. CUSTOMER authorizes PROVIDER to obtain from third parties financial and credit information relating to CUSTOMER and CUSTOMER's individual principal officers or owners, as authorized under this MSA. Such information will be used by PROVIDER in connection with PROVIDER'S determination whether to accept this MSA and PROVIDER's continuing evaluation of the financial and credit status of CUSTOMER. Pursuant to Applicable Law, including the USA PATRIOT

Act, PROVIDER is obtaining information and will take necessary action to verify CUSTOMER's identity. Upon request, CUSTOMER shall provide to PROVIDER or their representatives or our regulators reasonable access to CUSTOMER's facilities and records for the purpose of performing any inspection and/or copying of CUSTOMER's books and/or records deemed appropriate by PROVIDER.

- 3.2 CUSTOMER will provide PROVIDER with written notice of CUSTOMER's intent to liquidate, substantially change the basic nature of its business, transfer or sell any substantial part (25% or more in value) of its total assets, or if CUSTOMER or its parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, change the control or ownership of CUSTOMER or its parent, thirty (30) days prior to such liquidation, change, transfer or sale taking place. CUSTOMER will also notify PROVIDER of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of CUSTOMER's total assets not later than three days after CUSTOMER obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

**4. Indemnification.**

- 4.1 CUSTOMER agrees to indemnify and hold harmless PROVIDER, its affiliates, agents, subcontractors, employees directors and officers from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant, provision of this MSA or any misrepresentation by CUSTOMER under this MSA, pursuant to the Kansas Tort Claims Act, including liability limits provided in the Kansas Tort Claims Act. To the extent applicable, CUSTOMER's liability will be subject to the Kansas Tort Claims Act, including liability limits provided in the Kansas Tort Claims Act.
- 4.2 PROVIDER agrees to indemnify and hold harmless CUSTOMER from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant, provision of this MSA or any misrepresentation by PROVIDER under this MSA.
- 4.3 In the event of any legal action or claim with any third parties concerning any transaction or event in which a claim for indemnification against a party may be made under this MSA, the party to be indemnified hereunder (the "indemnified party") agrees to: (a) promptly notify the indemnifying party hereunder (the "indemnifying party") of the legal action or claim, (b) reasonably cooperate with the indemnifying party in the making of claims or defenses, and (c) provide information, assist in the resolution of the legal action or claim and make available at least one employee or agent who can testify regarding said claim or defenses. The indemnifying party shall, upon written notice from the indemnified party, immediately undertake the defense of any said legal action or claim with counsel reasonably satisfactory to the indemnified party. In any event the indemnifying party shall be entitled to direct the defense and settlement thereof with counsel reasonably satisfactory to the indemnified party; provided, however, that the indemnifying party shall not compromise or settle any claim or action affecting the indemnified party to the extent that it involves more than the payment of money by the indemnifying party hereunder without the indemnified party's written consent.

**5. Warranties; Exclusion of Consequential Damages; Limitation on Liability**

- 5.1 **Disclaimer of Warranties.** THIS MSA IS AN AGREEMENT FOR THE SERVICES AND EXCEPT AS EXPRESSLY PROVIDED HEREIN THIS MSA, PROVIDER AND ITS RESPECTIVE AFFILIATES DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CUSTOMER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS MSA.
- 5.2 **Exclusion of Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS MSA TO THE CONTRARY, IN NO EVENT SHALL PROVIDER OR ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 5.3 **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THIS MSA TO THE CONTRARY, PROVIDER'S CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY AND ALL CLAIMS MADE BY CUSTOMER AGAINST PROVIDER, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS MSA) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF, (I) \$100,000; OR (II) THE AMOUNT OF FEES RECEIVED BY PROVIDER PURSUANT TO THIS MSA FOR THE SERVICES IN THE IMMEDIATELY PRECEDING 12 MONTHS.

**6. Independent Contractor; Third Party Beneficiaries.** The parties are independent contractors. Neither party shall have any authority to bind the other. This MSA and any Addenda is entered into solely for the benefit of PROVIDER(S) and CUSTOMER and will not confer any rights upon any person not expressly a party to this MSA or any Addenda, including consumers. PROVIDER may subcontract with others to provide Services.

**7. Publicity.** Neither party will initiate publicity relating to this MSA without the prior written approval of the other, except that: (i) either party may make disclosures required by legal, accounting or regulatory requirements; and (ii) upon notice to CUSTOMER, PROVIDER may use CUSTOMER's name in publicity indicating that CUSTOMER and PROVIDER have entered into a contractual relationship. In no event will either party publicly disparage the other party.

**8. Exclusivity.** During this MSA term: (i) PROVIDER will be the sole and exclusive provider of Services to CUSTOMER; and (ii) CUSTOMER will not, directly or indirectly, offer or promote any other Services.

9. **Compliance with Applicable Law.** In performing its obligations under this MSA, the parties agree to comply with all Applicable Law. To the extent that CUSTOMER'S obligations under this MSA would cause CUSTOMER to violate any Applicable Law, CUSTOMER'S obligation to comply with such Applicable Law will prevail. CUSTOMER shall be solely responsible for (i) determining which laws and regulations apply to their activities under this MSA and (ii) maintaining compliance with all Applicable Law. CUSTOMER further agrees to cooperate with, and to provide information requested by, any PROVIDER as such PROVIDER deems necessary to facilitate its compliance with all Applicable Law. CUSTOMER must not use the Services for transactions prohibited by Applicable Law or the Card Organization Rules, such as those prohibited for alcoholic beverages, tobacco products, gambling (for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time) drugs, weapons, adult-content material, or adult web sites, services or entertainment.

10. **Assignment.**

10.1. CUSTOMER may not assign or transfer this MSA (or any portion of it), by operation of law or otherwise, and PROVIDER is not required to continue this MSA after CUSTOMER's merger, conversion of entity (e.g., from a corporation to a limited liability company) or consolidation, majority stock or substantial asset sale, without PROVIDER's prior written consent, which will not be unreasonably conditioned, withheld, or delayed. CUSTOMER agrees to provide PROVIDER with at least 30 days' prior written notice of CUSTOMER's intention to take any of those types of actions. Any purported assignment made or other action taken described in this Section without PROVIDER's prior written consent is void. Except as provided in the following sentence, this MSA will be binding upon successors and assigns and will inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, will have any right to continue or to assume or to assign this MSA (or any portion of it).

10.2 PROVIDER may, however, assign any or all of its rights or delegate any or all of its obligations to an affiliate or an entity acquiring all or substantially all of the assets of PROVIDER.

11. **Choice of Law and Venue.** This MSA will be governed by the laws respecting national banks and, to the extent not so covered, by the laws of the State of Kansas without regard to conflicts of law provisions. If any part of this MSA is not enforceable, the remaining provisions still remain valid and enforceable. In performing its obligations under this MSA, each party agrees to comply with Applicable Law and Card Organization Rules.

12. **Waiver of Jury Trial.** To the extent permitted by Applicable Law, CUSTOMER and PROVIDER waive any right to trial by jury in any action or proceeding regarding any litigation related to this MSA and agree that any such actions or proceedings will be tried by a judge without a jury.

13. **Confidentiality.** CUSTOMER will treat this MSA, the Card Organization Rules and any information supplied or otherwise made accessible by PROVIDER or PROVIDER's agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of PROVIDER, its affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords PROVIDER a competitive advantage over its competitors; (iii) user IDs, security codes, passwords, personal identification numbers, and other security devices and procedures for the Services or related thereto, and (iv) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from any individual or entity other than CUSTOMER or PROVIDER ("Person") and CUSTOMER's agents and representatives, which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by CUSTOMER on a non-confidential basis prior to its disclosure or (c) generally available to the public other than through any disclosure by or fault of CUSTOMER, CUSTOMER's agents or representatives.

PROVIDER's confidential information shall be used by CUSTOMER only to exercise CUSTOMER's rights and to perform CUSTOMER's obligations hereunder. CUSTOMER shall receive PROVIDER's confidential information in confidence and not disclose the confidential information to any Person, except as may be agreed upon in writing by PROVIDER. CUSTOMER shall safeguard all of PROVIDER's confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by PROVIDER or upon termination of this MSA, CUSTOMER shall return to PROVIDER or destroy all of PROVIDER's confidential information in its possession or control.

The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of this MSA or subsequently came into the public domain through no fault of CUSTOMER; (ii) was received from a Person free of any obligation of confidence of CUSTOMER to the Person and which Person, to CUSTOMER's knowledge, was not under an obligation to keep the information confidential; (iii) was already in CUSTOMER's possession prior to receipt from PROVIDER; (iv) is required to be disclosed by law, regulation or court order after giving PROVIDER as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by CUSTOMER's employees, consultants or agents without use of or reference to PROVIDER's confidential information.

PROVIDER acknowledges that CUSTOMER is a government entity subject to the Kansas Open Records Law. However, if a requestor under the Open Records law specifically seeks a cardholder's name and/or card number, CUSTOMER shall dispute such request, including through litigation if necessary, and advise PROVIDER of any such dispute or litigation. Notwithstanding the foregoing, CUSTOMER shall remain liable for its obligations under Section 26 of the Bankcard Addendum.

Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under PROVIDER's confidential information to CUSTOMER. Except as specifically provided for herein, no license is hereby granted to CUSTOMER under any patent, trademark, copyright, trade secret or other proprietary rights of PROVIDER.

CUSTOMER acknowledges that breach of the restrictions on use or disclosure of PROVIDER's confidential information would result in immediate and irreparable harm to PROVIDER, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

With respect to any information received by PROVIDER from CUSTOMER via its use of the Services, PROVIDER will keep such information confidential in accordance with applicable law; provided, that PROVIDER may disclose such information (i) to third parties to the extent necessary to provide the Services, (ii) PROVIDER's auditors and attorneys (internal and external) and regulators, and (iii) as required or permitted by law, regulation or court order.

CUSTOMER shall not assign to any Person the rights to use the Marks of PROVIDER, its agents or the Card Organizations.

**14. Force Majeure.** PROVIDER shall not be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, if applicable, the nonperformance, delay or error by a third party or in any other third party system for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; any outbreak or escalation of hostilities, war, riots, terrorism or civil disorders in any country; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of the other party or any government authority, or other causes reasonably beyond the control of PROVIDER.

**15. Intentionally omitted.**

**16. Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing facsimile confirmation), if to CUSTOMER at the address appearing on the first page of this MSA and if to PROVIDER, at the following address (unless specified otherwise in an Addendum): First Data Services, LLC, 1307 Walt Whitman Road, Melville, New York 11747, Facsimile (631) 683-7516, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office, 5565 Glenridge Connector N.E., Atlanta, Georgia 30342, and shall be deemed to have been given (i) if sent by mail or courier, when received, and (ii) if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner shall be effective when actually received.

**17. Headings.** The headings contained in this MSA are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this MSA.

**18. Severability.** The parties intend every provision of this MSA to be severable. If any part of this MSA is not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

**19. Entire Agreement; Waiver.** This MSA constitutes the entire agreement between the parties with respect to the subject matter, supersedes any previous agreements and understandings and, except as provided in other Sections of this MSA, can be changed only by a written agreement signed by all parties. Furthermore, the provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto as Exhibit A, are hereby incorporated in this MSA and made a part hereof. Except as specifically provided herein, this MSA will not benefit, or create any right or cause of action on behalf of, any person other than the parties. Throughout this MSA, where appropriate, singular terms include the plural and the plural includes the singular and the words "will" and "shall" are used interchangeably and have the same meaning. Headings are for convenience and reference only and not part of this MSA. Purchase orders, requests for production, pre-printed terms or other CUSTOMER-generated documents that PROVIDER may receive are for administrative convenience only and do not modify this MSA and are expressly rejected by PROVIDER.

A waiver by either of the parties of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach or of any other covenant, condition or agreement contained in this MSA. No waiver will be effective unless made in writing by the party against whom it is being enforced.

[Signature page follows]

The parties hereto have caused this MSA to be executed by their duly authorized officers. THIS MSA IS NOT BINDING UPON PROVIDER UNTIL SIGNED BY PROVIDER

STATE OF KANSAS  
("CUSTOMER")

By: 

Name: CHRIS HOWE  
(Please Print or Type)

Title: DIRECTOR, PROCUREMENT

Date: 2/27/12

FIRST DATA SERVICES, LLC  
("FDS")

By: 

Name: Ed Sykes  
(Please Print or Type)

Title: SVP

Date: 2/20/12

RECEIVED

2012 FEB 27 A 11:02

DIVISION OF PURCHASES

## MERCHANT SERVICES BANKCARD ADDENDUM TO MASTER SERVICES AGREEMENT

This Merchant Services Bankcard Addendum ("Bankcard Addendum") is entered into by and among the undersigned customer ("CUSTOMER", BANK OF AMERICA, NA ("BANK") and FIRST DATA SERVICES, LLC ("FDS") and supplements the Master Services Agreement between FDS and CUSTOMER (the "MSA"). BANK hereby joins the MSA as a PROVIDER (as defined in the MSA) and agrees to be bound by its terms. Each of BANK and FDS is a PROVIDER and collectively referred to in this Bankcard Addendum as the "SERVICERS". References to the MSA in this Bankcard Addendum shall include this Bankcard Addendum. Capitalized terms not defined in this Bankcard Addendum are defined in the MSA or Card Organization Rules. The Card Organization Rules are made a part of this Bankcard Addendum by this reference to them, and reference to this Bankcard Addendum or Operating Guide shall be deemed to include the Card Organization Rules, unless stated otherwise.

This Bankcard Addendum governs processing services regarding credit, debit and certain other Card transactions and other services, as those services are further described in this Bankcard Addendum, the Fee Schedule attached hereto as Schedule A (including any additions and changes thereto, the "Fee Schedule"), any and all concurrent and subsequent addenda, supplements or schedules to this Bankcard Addendum (each, including the Fee Schedule, as amended from time to time, a "Supplement"), and the Card Organization Rules, all as elected by CUSTOMER and approved by SERVICERS (or their applicable Affiliate) (for the purposes of this Addendum, collectively, the "Services"). Unless otherwise expressly provided in the MSA, this Bankcard Addendum or any Supplement, (i) references to each Supplement shall be deemed to include this Bankcard Addendum, (ii) references to this Bankcard Addendum shall be deemed to include each Supplement, and (iii) references to an Addendum in the MSA shall be deemed to include this Bankcard Addendum and each Supplement with respect to the Services. To the extent the terms of a Supplement directly conflict with the terms of this Bankcard Addendum, the terms of that Supplement shall control. CUSTOMER and SERVICERS agree to comply with this Bankcard Addendum. In performing this Bankcard Addendum, without diminishing SERVICERS' obligations to CUSTOMER, SERVICERS may use the services of third parties, including, without limitation, their respective Affiliates.

BANK's obligations hereunder shall be limited to the sponsorship and settlement of certain Card transactions submitted in accordance with the terms and conditions of this Bankcard Addendum and the Bankcard Card Organization Rules, and BANK shall not have any obligation or liability of any nature in connection with any and all debit or EBT transactions or related services or any services of any kind provided by FDS or its Affiliates provided hereunder or pursuant hereto.

In consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, SERVICERS and CUSTOMER agree as follows:

1. **Definitions.** As used in this Bankcard Addendum, capitalized terms will have the meaning set forth in Annex 1, the Operating Guide or Card Organization Rules, as applicable.
2. **Services.**
  - 2.1 During the term of the Bankcard Addendum, CUSTOMER shall use SERVICERS as its exclusive provider of all Services for CUSTOMER.
  - 2.2 Subject to Card Organization Rules, Services may be performed by FDS or BANK subject to the agreements between them as the same may be modified from time to time. In addition to SERVICERS, one or more affiliates of FDS may assist in providing Terminals or other equipment and local support functions in connection with this Bankcard Addendum.
  - 2.3 SERVICERS will make the Services operational and available to CUSTOMER through a mutually agreed upon implementation plan. CUSTOMER agrees to at all times cooperate with SERVICERS and provide SERVICERS with all necessary information and assistance required by SERVICERS to provide the Services in accordance with the Card Organization Rules and Applicable Law, including, without limitation, making changes to Merchant Equipment as SERVICERS require. CUSTOMER will be responsible for (i) use of the Services by CUSTOMER, CUSTOMER's employees and agents and Merchant Providers, (ii) CUSTOMER's failure to properly access the Services in the manner prescribed by SERVICERS, and (iii) CUSTOMER's failure to supply accurate information regarding the Services.
3. **Election of Cards, Duty to Honor Cards and Use of Marks.**
  - 3.1 **Card Election.** CUSTOMER has elected and SERVICERS have approved CUSTOMER to accept those Card types and Services designated in this Bankcard Addendum or the Supplements. CUSTOMER may change CUSTOMER's election of Card types and Services from time to time upon at least sixty (60) days' advance notice to SERVICERS; SERVICERS will use their reasonable efforts to accommodate CUSTOMER's requests in less than this time but SERVICERS will not be obligated to do so. Upon SERVICERS' approval of such new Card type or Service, the parties will execute a Supplement therefor. CUSTOMER will not seek authorization for or submit a transaction of a new Card type until the parties have entered into a Supplement for it. Unless otherwise directed by SERVICERS, CUSTOMER will not seek authorization for or submit a Card transaction of a Card type CUSTOMER desire to discontinue accepting later than the effective date of the notice to SERVICERS. With respect to inadvertent or intentional acceptance of a transaction other than the type or service anticipated for CUSTOMER's account (including, without limitation, a different Card type), CUSTOMER will also be subject to payment to SERVICERS of their then-current transaction fee(s) with respect to such Card, transaction and/or service and be liable, obligated and responsible under this Bankcard Addendum for any such transaction or service to the same extent as CUSTOMER would be if it was of an anticipated Card type or service.
  - 3.2 **Honoring Cards Generally.** CUSTOMER will honor a Card by accepting it for payment. CUSTOMER will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular Card type elected by CUSTOMER and approved by SERVICERS, in favor of any competing Card brand also elected and approved.
  - 3.3 **Cards Issued by US Card Issuers.** For all Cards issued by U.S. Issuers, CUSTOMER will honor all Cards within the Card types elected and approved in accordance with this Bankcard Addendum. For example, if CUSTOMER elects and is approved to accept Visa credit Cards, CUSTOMER will submit payments from Visa-branded credit Card Cardholders without regard to whether the credit Card is a Visa-branded rewards credit Card or Visa-branded business purpose credit Card.



3.4 Cards Issued by Non-US Card Issuers. CUSTOMER will honor all Cards issued by non-U.S. Issuers. For example, even if CUSTOMER elects to limit CUSTOMER's acceptance of MasterCard Cards to MasterCard credit Cards, CUSTOMER will accept for processing a MasterCard debit Card issued by a non-U.S. Card issuer.

3.5 Marks Generally. CUSTOMER and SERVICERS acknowledge that no party will acquire any right, title or interest in or to the Marks of any other party or of any Card Organization or SERVICERS' agents by virtue of this Bankcard Addendum, without prior written consent. CUSTOMER will not assign to any third party any of the rights to use the Marks of SERVICERS, SERVICERS' agents or Card Organizations.

Except as otherwise provided herein, no party will use any other party's Marks, or use language from which the connection of such Marks may be inferred, in any advertising, written sales promotion, press releases or other publicity matters relating to this Bankcard Addendum without such party's prior written consent.

4. **General Requirements and Restrictions for Card Transactions.**

4.1 Accuracy of Data Submitted. CUSTOMER will be responsible for the quality and accuracy of all data provided to SERVICERS. SERVICERS may, at SERVICERS' option, return to CUSTOMER for correction before processing any data submitted by CUSTOMER which is incorrect, illegible or otherwise not in proper form. If CUSTOMER do not provide data in accordance with SERVICERS' specified format and schedule, SERVICERS will use reasonable efforts to reschedule and process the data as promptly as possible, but related expenses incurred by SERVICERS will be charged to CUSTOMER.

4.2 Prohibitions on Increasing Price of Goods or Services. CUSTOMER will not increase the price of goods or services for a Card transaction or impose any fee for the service of accepting a Card except as allowed by the Card Organization Rules and Applicable Law. CUSTOMER may charge a convenience or service fee for a Card transaction only as permitted by the Card Organization Rules and Applicable Law. If clearly disclosed to the Cardholder, CUSTOMER may offer a discount from the standard price for payments by cash.

4.3 Payments from Cardholders. CUSTOMER agrees that CUSTOMER will not accept or process, any funds representing a Cardholder's payment to an Issuer.

4.4 Prohibition on Aggregating and Factoring and Employee Transactions. CUSTOMER is prohibited from submitting or presenting, and agrees not to submit or to present, any authorization requests for transactions and Sales Drafts arising from transactions between (i) CUSTOMER and Cardholders who are CUSTOMER's owners, partners, guarantors, officers or employees, other than genuine purchases, leases or rentals of goods or services from CUSTOMER or other payments to CUSTOMER, all in the ordinary course of CUSTOMER's business, and (ii) Cardholders and third parties for their goods or services or other payments to them.

4.5 Draft Requirements. All Sales Drafts and Credit Drafts must include all information required under and in accordance with the Operating Guide, Card Organization Rules and Applicable Law.

4.6 Unless otherwise agreed in advance and writing by SERVICERS, CUSTOMER must submit all Card transactions in U.S. dollars.

5. **Operating Guide; Card Organization Rules and Compliance.**

CUSTOMER acknowledges that it has received the Operating Guide, the terms of which are incorporated into this Bankcard Addendum; any reference to this Bankcard Addendum includes the Operating Guide. Notwithstanding any provision to the contrary contained in this Bankcard Addendum, the parties hereto acknowledge and agree that the Operating Guide provides the principals of a sound Card program and contain the relevant subset of the Card Organization Rules. However, the Operating Guide is not a complete set of all Card Organization Rules. If CUSTOMER loses or otherwise misplaces the Operating Guide or notices of changes thereto, CUSTOMER shall be responsible for contacting SERVICERS to obtain replacement copies. From time to time, SERVICERS may change the Operating Guide, in whole or in part, and other operating procedures, by providing CUSTOMER with at least thirty (30) days' prior written notice of the change. However, in the event of changes in the Card Organization Rules or due to security reasons, certain changes in Card procedures may become effective on shorter notice. If there is any conflict between the terms of this Bankcard Addendum and the Operating Guide, the terms of this Bankcard Addendum will govern, unless the conflict is directly related to a change in the Operating Guide which specifically addresses a procedure or requirement detailed in this Bankcard Addendum.

CUSTOMER must comply with the Card Organization Rules and Applicable Law, however, with regard to Card Organization Rules; CUSTOMER need only comply with those applicable to Cards. CUSTOMER will review the Card Organization Rules and Applicable Law from time to time for changes. Card Organization Rules are available on web sites, such as <http://www.usa.visa.com/merchants>, and <http://www.mastercardmerchant.com>, as those links may be changed from time to time.

6. **Authorization.**

6.1 CUSTOMER agrees to submit only Card transactions for which CUSTOMER has received an Authorization. Obtaining an Authorization will not ensure payment to CUSTOMER for a Sales Draft. The fact that an Authorization is obtained by CUSTOMER will not affect SERVICERS' rights thereafter to revoke Authorization of a Card transaction or to charge back the transaction to CUSTOMER. In no event will the fact that an Authorization is obtained by CUSTOMER be deemed to be SERVICERS' representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

6.2 The Authorization number provided by SERVICERS shall be noted by CUSTOMER in the appropriate place on the Sales Draft. If Authorization is declined, CUSTOMER shall not complete the Card transaction.

- 6.3 CUSTOMER shall comply with any special authorization procedures contained in the Card Organization Rules and any other sections of parts of this Bankcard Addendum.
- 6.4 CUSTOMER acknowledges that Authorization, (i) indicates only the availability of credit at the time of Authorization; (ii) does not warrant that the person presenting the Card is the rightful Cardholder; and (iii) is not an unconditional promise or guarantee by SERVICERS that any Card transaction will not be subject to Chargeback.
- 6.5 If CUSTOMER obtains an Authorization by telephone, CUSTOMER shall record the approval number on the Sales Draft.

**7. Electronic Commerce Transactions**

CUSTOMER acknowledges and agrees that this Section 7 pertains only to ECTs that arise from transactions effected in U. S. dollars. All CUSTOMER's ECTs must be in U.S. dollars and will be settled in U.S. dollars. Under the Card Organization Rules, ECTs are considered non face-to-face Card transactions. In addition, CUSTOMER must properly identify each ECT in the Sales Draft.

CUSTOMER agrees to develop and maintain a point of presence on the Internet at CUSTOMER's expense. CUSTOMER must post CUSTOMER's consumer data privacy policy and method of transaction security on CUSTOMER's web site(s) in accordance with the Card Organization Rules and Applicable Law. CUSTOMER will, in accordance with the Card Organization Rules and Applicable Law, (i) install and maintain a working firewall to protect data accessible via the Internet; (ii) keep security patches up to date; (iii) encrypt stored data; (iv) encrypt data sent across networks; (v) use and regularly update anti-virus software; (vi) restrict access to data on a "need to know" basis; (vii) assign a unique ID to each person with computer access to data; (viii) not use vendor-supplied defaults for system passwords and other security parameters; (ix) track access to data by unique ID; (x) regularly test security systems and processes; (xi) maintain a policy that addresses information security for employees and contractors; and (xii) restrict physical access to Cardholder data.

CUSTOMER's Internet web site must contain (a) a complete description of the goods or services offered, (b) CUSTOMER's returned merchandise and refund policy, (c) CUSTOMER's customer service contact information, including e-mail address and/or telephone number, (d) transaction currency, (e) export or legal restrictions (if known), (f) CUSTOMER's delivery policy and (g) CUSTOMER's country of domicile immediately prior to the Cardholder's accessing of payment instructions. In addition, CUSTOMER must disclose, at all points of Cardholder interaction (including any of CUSTOMER's supplier or subcontractor Internet web sites and any of CUSTOMER's promotional materials and invoices), to the Cardholder that CUSTOMER, and not any of any CUSTOMER's suppliers of goods or subcontractors for services, is the merchant of record and responsible for any Card transaction. CUSTOMER must also notify the Cardholder that CUSTOMER is responsible for (i) payment transactions, (ii) products and services, (iii) direct customer service, (iv) dispute resolution, and (v) all terms and conditions of the transaction. CUSTOMER must display on CUSTOMER's Internet web site(s) the Card Organization Marks, wherever CUSTOMER display payment options, in accordance with the Operating Guide and Subsection 3.5 of this Bankcard Addendum.

CUSTOMER will be responsible for all costs of connectivity and communication between CUSTOMER, the Internet and SERVICERS. CUSTOMER agrees to utilize SSL (Secure Sockets Layer) or other secure compatible encryption method acceptable to SERVICERS in providing CUSTOMER's ECTs to SERVICERS for authorization, processing and settlement.

CUSTOMER assumes all responsibility for identification of the Cardholder and the validity of the Card information for ECT. CUSTOMER agrees that each Authorization request will include a request for address verification and a positive response for it. CUSTOMER agrees to identify separately any high-risk transactions CUSTOMER submits. The high-risk transactions include, but are not limited to, any under Merchant Category Code 5967 – Direct Marketing – Inbound Telemarketing Merchants.

**8. Multiple Sales Drafts and Partial Consideration.**

- 8.1 Except as shall be specifically set forth in the Operating Guide or the Card Organization Rules, CUSTOMER shall list all items of goods and services purchased during each Card transaction and the total amount thereof on a single Sales Draft.
- 8.2 CUSTOMER shall comply with all special procedures and conditions applicable under the Operating Guide and the Card Organization Rules with respect to any partial payment, installment payment, delayed delivery or advance deposit situation and any delayed or amended charges for a travel and entertainment transaction. CUSTOMER shall not use more than one Sales Draft to represent a single Card transaction to avoid the need for Authorization.

**9. Pre-Authorized Orders.**

- 9.1 A Pre-Authorized Order may include the payment of recurring charges such as insurance premiums, subscriptions, membership fees, tuition or utility charges and may also include preauthorized health care payments (subject to a Supplement).
- 9.2 If CUSTOMER is authorized to accept Pre-Authorized Orders, Authorization for each such Card transaction, regardless of the amount, must be obtained, and CUSTOMER must write "Recurring Transaction" (for Visa and other non-MasterCard Card transactions) or "PO" (for MasterCard Card transactions) as applicable, on the Sales Draft in lieu of the Cardholder's signature.
- 9.3 Except for preauthorized health care payments for the incremental costs not covered by insurance, advance deposits and installment payments, all made in compliance with this Bankcard Addendum, a Pre-Authorized Order may not include partial payments made to CUSTOMER for goods or services purchased in a single transaction. In no event may any finance charges be imposed on any periodic payments in connection with a Pre-Authorized Order.
- 9.4 CUSTOMER may not accept a Pre-Authorized Order from a Cardholder for the purchase of goods or services which are delivered or performed periodically unless the Cardholder completes and delivers to CUSTOMER a written request



(and, when applicable, a written renewal request) identifying (i) the goods or services to be charged to the Cardholder's account, (ii) the amount of the preauthorized or recurring charges (unless such charges are for variable amounts), (iii) the frequency of the preauthorized or recurring charges and (iv) the duration of time for which the Cardholder's permission is granted. If CUSTOMER accepts any Pre-Authorized Orders for variable amounts, CUSTOMER must comply with the supplemental provisions set forth in the applicable Supplements.

- 9.5 The Cardholder's written request (including any written renewal request) must be (a) retained for the duration of the preauthorized or recurring charges; (b) provided in response to an Issuer's request for original documentation; and (c) used no longer after receiving notice of cancellation.

**10. CUSTOMER Responsibilities for Persons Used by CUSTOMER.**

10.1 Use of Persons. CUSTOMER's use of the services, equipment, Software, systems, materials, supplies or resources of Persons regarding CUSTOMER's Card transactions processing, including, without limitation, Merchant Providers and any third party lessors and licensors, will not affect CUSTOMER's obligations under this Bankcard Addendum to SERVICERS which will apply to the same extent as if CUSTOMER had not used them. SERVICERS have no liability or responsibility to CUSTOMER or others regarding these Persons, even if SERVICERS referred them to CUSTOMER. These third parties are CUSTOMER's agents, and CUSTOMER is solely responsible for (i) determining whether they can meet CUSTOMER's needs and standards, (ii) their actions, inactions and compliance with the terms of this Bankcard Addendum and Applicable Law and (iii) any and all fees, costs, expenses and other obligations owed to them by CUSTOMER or owed by them to SERVICERS or to the Card Organizations.

10.2 Merchant Providers. Before CUSTOMER engages any Merchant Provider, CUSTOMER must provide to SERVICERS in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. CUSTOMER covenants with SERVICERS that CUSTOMER will not use, allow the use of, or provide to any Merchant Provider access to any Cardholder data, FDS Systems, FDS Software or Services until CUSTOMER receives SERVICERS' approval and, if required, confirmation of SERVICERS' registration of that Merchant Provider with applicable Card Organizations. CUSTOMER must ensure that CUSTOMER and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with this Bankcard Addendum and Applicable Law, including without limitation, those provisions requiring security of Cardholder data. CUSTOMER may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules and Applicable Law. CUSTOMER is responsible for all SERVICERS' costs and expenses associated with SERVICERS' review, approval, certification (and recertification as may required by the Card Organization Rules) and registration of any Merchant Providers.

Upon request and reasonable notice, CUSTOMER will provide and will ensure that Merchant Providers provide to SERVICERS and SERVICERS' respective representatives prompt access to CUSTOMER's and their facilities and records for the purposes of performing any inspection and copying books or records pertaining to the transactions contemplated under this Bankcard Addendum. CUSTOMER must have written agreements with Merchant Providers requiring such access.

**11. Cardholder Refunds and Credits.**

- 11.1 If a Cardholder returns goods or cancels services purchased from CUSTOMER with a Card, or CUSTOMER allows any other price adjustment after a sale has been completed and a refund or adjustment is due to the Cardholder (other than any involuntary refund required by applicable airline or other tariff or by Applicable Law), CUSTOMER will not return cash to the Cardholder but will instead prepare a Credit Draft and process each such refund or adjustment, as specified in the Operating Guide and Card Organization Rules. CUSTOMER will give the Cardholder a copy of the completed Credit Draft.
- 11.2 If CUSTOMER establishes a policy limiting refunds or acceptance of returned merchandise (e.g., no refund, exchange only, in-store credit only, or special conditions), CUSTOMER must follow the procedures set forth in the Operating Guide regarding refunds and returned merchandise.

**12. Presentment of Card Transactions.**

12.1 Locations. CUSTOMER will provide SERVICERS with a complete list of all CUSTOMER's Locations in the United States and its territories where CUSTOMER desires to accept Cards, with current information for each Location, including, physical address and telephone number(s), mailing address and, if available, fax number(s) and email address(es). CUSTOMER will provide an updated list as changes to any of CUSTOMER's Locations or their related information occur.

12.2 CUSTOMER shall electronically (or physically, when authorized by SERVICERS) deliver to SERVICERS Sales Drafts and Credit Drafts for all Card transactions to be processed and settled under this Bankcard Addendum. The deadlines for submitting Sales Drafts and Credit Drafts are set forth in the Operating Guide and Card Organization Rules corresponding to the applicable Card types and desired rates. In no event shall such deadlines be later than the fifth calendar day or third banking day (whichever is earlier) after completing Card transactions (unless CUSTOMER is entitled to any special extension of these deadlines). CUSTOMER acknowledges that the times specified in the preceding sentence are the maximum deadlines and that faster time frames are required to qualify for incentive programs.

12.3 CUSTOMER will not submit any Sales Draft that was not created in conjunction with a Card transaction between CUSTOMER and the applicable Cardholder. Under no circumstances will CUSTOMER submit any Sales Draft that has been previously charged back by the Cardholder and subsequently returned to CUSTOMER.

**13. Settlement of Card Transactions.**

13.1 Settlement of Sales Drafts. SERVICERS will settle with CUSTOMER for each Sales Draft acquired and accepted by SERVICERS under this Bankcard Addendum after SERVICERS receive payment for that Sales Draft from the related Card Organization, subject to the terms of this Bankcard Addendum. Unless SERVICERS agree in writing otherwise, SERVICERS will only acquire Sales Drafts for Visa, MasterCard and Discover Network Card types (including those of

other Card Organizations processed under Visa, MasterCard or Discover Network Card Organization Rules); provided, however, that, if CUSTOMER has been classified by Discover Network as having a Discover Direct Strategic Relationship with Discover Network, SERVICERS will not acquire CUSTOMER's Discover Network transactions and they will be subject to CUSTOMER's agreement with Discover Network. CUSTOMER acknowledges and agrees that if SERVICERS have not agreed to or do not acquire transactions for any Card type (i) SERVICERS have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) CUSTOMER will pursue directly with the related Card Organization all claims and disputes regarding those transactions. CUSTOMER agrees to pay SERVICERS for per item processing, authorization and other fees in the Fee Schedule for any non-acquired transaction services CUSTOMER receives from SERVICERS.

- 13.2 Settlement Account and Its Operation. CUSTOMER will designate, in writing, and maintain, the Settlement Account for the purposes of settling transactions under this Bankcard Addendum. If the Settlement Account is with BANK, in the absence of any other written agreement with BANK, the standard terms and conditions that apply to BANK's deposit accounts of the same type will apply. As amounts become payable to CUSTOMER or to SERVICERS under this Bankcard Addendum, SERVICERS may, unless otherwise agreed, make payments to or receive payments from CUSTOMER by crediting or debiting the Settlement Account without prior notice. If CUSTOMER does not maintain a Settlement Account with BANK, payments between CUSTOMER and SERVICERS must be made in a manner satisfactory to SERVICERS. If CUSTOMER does not maintain sufficient balances in the Settlement Account to cover amounts owing under this Bankcard Addendum, CUSTOMER must immediately pay all such amounts directly to SERVICERS, and if CUSTOMER does not do so, at SERVICERS' discretion SERVICERS may cease processing additional Card transactions until the amounts due are paid.

CUSTOMER acknowledges and agrees that transfers to or from the Settlement Account will be made on the basis of account number and bank routing number only. SERVICERS are not responsible for detecting errors in any Settlement Account information CUSTOMER provides, including the account numbers and routing numbers associated with the Settlement Account, even if any of those numbers do not correspond to the account or bank identified by name. CUSTOMER's obligations and SERVICERS' rights regarding any settlement transfers SERVICERS make in reliance on the account number(s) and bank routing number(s) for the Settlement Account are not excused in those circumstance, even if CUSTOMER provides SERVICERS erroneous information.

SERVICERS will initiate a transfer of settlement funds to CUSTOMER as set forth in Section 13.3. SERVICERS will not be liable for any delays in receipt of settlement funds or errors in credits or debits to the Settlement Account that are caused by Persons, including but not limited to, delays or errors of any Card Organization or any financial institution other than BANK.

13.3 Settlement Amounts and Time for Settlement. All settlements to CUSTOMER for Sales Drafts will be based upon gross sales, minus the amounts of Credit Drafts, adjustments, applicable fees, Chargebacks, and any other amounts then due from CUSTOMER to SERVICERS, whether netted at settlement or separately debited. All credits to CUSTOMER's Settlement Account or other payments to CUSTOMER are provisional and are subject to (i) SERVICERS' final audit and confirmation, (ii) Card Organization Rules and (iii) any other obligations owed by CUSTOMER to SERVICERS.

Except as otherwise set forth in this Bankcard Addendum, if SERVICERS receive CUSTOMER's Sales Drafts by the applicable cut off time established by SERVICERS, SERVICERS will initiate a transfer of applicable settlement funds, after receipt thereof from the Card Organizations, via ACH (or other payment system available from SERVICERS for these types of transfers) to CUSTOMER's Settlement Account. SERVICERS will generally initiate this transfer by the following Business Day after SERVICERS process the applicable transactions. Generally, the Settlement Account will be credited within two Business Days after SERVICERS' initiation of the transfer.

- 13.4 Settlement Amounts Subject to Adjustments. This Bankcard Addendum is a contract whereby SERVICERS are extending financial accommodations to CUSTOMER within the meaning of Section 365(c) of the Bankruptcy Code. CUSTOMER's right to receive any amounts due or to become due from SERVICERS or SERVICERS' respective Affiliates, whether or not those amounts are related to this Bankcard Addendum, is expressly subject and subordinate to Chargeback, setoff, lien, security interest and SERVICERS' rights to withhold settlement funds under this Bankcard Addendum, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

#### 14 Fees; Adjustments; Collection of Amounts Due; Reconciliation.

14.1 Fees and Card Organization Charges. CUSTOMER will pay SERVICERS, within the times specified by SERVICERS, all the fees and charges for the Services calculated pursuant to the Fee Schedule, which includes fees that are in whole or in part based on (i) fees set by Card Organizations, including, without limitation, interchange fees ("Card Organization Based Fees"), and (ii) fees set by other third parties (together with Card Organization Based Fees, "Third Party Based Fees"), and (iii) fees that SERVICERS set. Fees will be charged for all authorization requests, whether or not approved, all Sales Drafts submitted for processing, all Credit Drafts and all Chargebacks. If a Card transaction does not qualify for the lowest interchange rate for which it is eligible, then that Card transaction will be downgraded and processed at a more costly interchange rate for which it qualifies. CUSTOMER will pay retroactive increased interchange fees for any Card transactions that a Card Organization determines did not qualify for the rates originally used.

CUSTOMER acknowledges that the fees stated herein are based upon the qualification of CUSTOMER's Card transactions for certain reduced interchange fees as set by the applicable Card Organizations. If a transaction fails to qualify for CUSTOMER's anticipated interchange levels or CUSTOMER inadvertently or intentionally accepts a Card transaction other than the type anticipated for its account (including a different Card type), then, as applicable to the pricing set forth in the Fee

Schedule, CUSTOMER will be charged a higher interchange, discount rate or non-qualified interchange fee, as well any applicable surcharge for that transaction, all as set forth in the Fee Schedule.

The fees for Services set forth in this Bankcard Addendum are based upon assumptions associated with the anticipated annual volume and average transaction size set forth on the Fee Schedule and CUSTOMER's method of doing business. If the actual volume or average transaction size are not as expected or if CUSTOMER significantly alters your method of doing business, SERVICERS may adjust your discount fees and transaction fees without prior notice.

14.2 Card Organization Fees, Fines, Assessments and Penalties. In addition, CUSTOMER will pay to SERVICERS all fees (including increased fees), assessments, fines, penalties, Issuer reimbursements and similar charges imposed by Card Organizations on SERVICERS, directly related to CUSTOMER's Card transactions or based on CUSTOMER's actions or failure to act, including, but not limited to, CUSTOMER's non compliance with data security requirements.

14.3 Payment of Fees, Charges and Other Amounts. SERVICERS may debit the Settlement Account for, or withhold from funds SERVICERS owe CUSTOMER under this Bankcard Addendum, all amounts CUSTOMER owes SERVICERS under this Bankcard Addendum. If the Settlement Account has insufficient funds, SERVICERS may, without advance notice, withdraw the funds CUSTOMER owes SERVICERS from the Reserve Account, or any other account CUSTOMER maintains with SERVICERS (or their respective Affiliates) or to which CUSTOMER has granted SERVICERS access. If sufficient funds are not available from those sources, CUSTOMER must pay the amount of any deficiency immediately upon demand.

14.4 Changes in Amount of Fees and New Fees. SERVICERS will provide CUSTOMER with at least thirty (30) days' advance notice of any Third Party Based Fee changes in the Fee Schedule. However, SERVICERS' ability to provide notice of changes to Third Party Based Fees depends on SERVICERS' receipt of timely notice from those parties, and SERVICERS may not be able to provide CUSTOMER with that much advance notice for those fee changes, and in those instances, changes will become effective on the date specified in the notice. CUSTOMER will be responsible for paying any increased or new fees as of the effective date in SERVICERS' notice, unless CUSTOMER gives notice of termination of this Bankcard Addendum to SERVICERS, and ceases processing Card transactions, within 30 days of SERVICERS' notice.

14.5 Fees for Supplies and Other Services. In addition to the other payments required in this Bankcard Addendum, CUSTOMER agree to pay SERVICERS for any other fees and charges and any special services or handling CUSTOMER requests or requires not covered in this Bankcard Addendum. CUSTOMER also agrees to pay SERVICERS for amounts CUSTOMER owes to Persons that SERVICERS pay, for example, payments for leased or rented Merchant Equipment.

14.6 Taxes, Installation & De-Installation. CUSTOMER agrees to pay any and all sales, use, excise, personal property, stamp, documentary and ad-valorem taxes, license and registration fees, assessments, fines, penalties and similar charges ("Taxes") imposed on the Services or the transactions contemplated by this Bankcard Addendum. CUSTOMER also agrees to pay any and all Taxes imposed on the ownership, possession or use of the Merchant Equipment. CUSTOMER authorizes SERVICERS, or SERVICERS' respective assigns, to increase the amount of CUSTOMER's preauthorized payment to reflect any and all increases in all applicable Taxes. CUSTOMER further agrees to pay any and all costs associated with the installation and de-installation of Purchased Equipment. CUSTOMER is not responsible for any taxes imposed on SERVICERS based on SERVICERS' net income.

14.7 Duty to Review Statements and Report Discrepancies. CUSTOMER must promptly and carefully review, statements and reports provided or made available to CUSTOMER (physically, electronically or otherwise) reflecting Card transaction activity, including, activity in the Settlement Account and Reserve Account, whether provided by SERVICERS or Persons.

14.8 Duty to Notify Bank of Discrepancies or Adjustments. If CUSTOMER believes any discrepancies exist or adjustments are needed with respect to any debits or credits effected by SERVICERS with respect to CUSTOMER's Settlement Account or the Reserve Account or for any amounts due to or due from CUSTOMER, or if CUSTOMER has any other questions or concerns regarding CUSTOMER's Card transactions that are processed and settled by SERVICERS or regarding any statement or report provided or made available by SERVICERS (physically, electronically or otherwise), CUSTOMER must notify SERVICERS in writing (i) within sixty (60) days after such debit or credit is effected, such transaction is processed and settled, or such statement or report is provided, or (ii) such shorter time as is provided in the terms and conditions covering that account. If CUSTOMER fails to notify SERVICERS within such time frame, SERVICERS will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by SERVICERS. If CUSTOMER notifies SERVICERS after such time period, SERVICERS may, in SERVICERS' discretion and at CUSTOMER's cost, investigate the matter addressed in CUSTOMER's notice, but SERVICERS will not have any liability to effect any related adjustment absent any willful misconduct by SERVICERS. Any voluntary efforts by SERVICERS to assist CUSTOMER in investigating such matters will not create any obligation to continue such investigation or any future investigation.

14.9 Duty Regarding Merchant Systems. CUSTOMER will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition within the Merchant Systems, and for notifying SERVICERS of any errors in the foregoing after receipt of the applicable report from SERVICERS. CUSTOMER will notify SERVICERS of all incorrect reports or output within two (2) Business Days after receipt of such reports or output. Within one (1) business day of the original transaction, CUSTOMER must balance each Location to the FDS system for each business day that each Location is open. If CUSTOMER determines that transaction(s) have been processed in error, CUSTOMER will initiate the appropriate transaction for adjustment to correct the transaction in question. CUSTOMER is responsible for all applicable adjustment fees per applicable Card Organization.

15. **Chargebacks.**

15.1 Chargebacks Payable Immediately. CUSTOMER will pay SERVICERS the amount of each Card transaction that CUSTOMER submitted to SERVICERS for processing that is charged back to SERVICERS for any reason permitted by the Card Organization Rules. Each Chargeback to CUSTOMER is immediately due and payable by CUSTOMER.

15.2 Disputing Chargebacks. CUSTOMER may dispute a Chargeback as provided in the Card Organization Rules, including any requirements for timely submission. SERVICERS' obligation to CUSTOMER respecting Chargeback disputes is limited to permissible presentation of CUSTOMER's dispute to the appropriate Card Organization. SERVICERS will not engage in direct collection efforts against Cardholders on CUSTOMER's behalf.

15.3 Chargeback Fees. CUSTOMER will pay SERVICERS the fees associated with processing Chargebacks as provided in the Fee Schedule, without regard to whether the Chargeback is settled in CUSTOMER's favor or the Cardholder's favor. In addition, in the event the percentage of Chargebacks to CUSTOMER's merchant account meets or exceeds the percentage considered excessive by the Card Organizations, CUSTOMER will pay SERVICERS the Excess Chargeback Fee stated in the Fee Schedule (in addition to any fees imposed on SERVICERS by the Card Organizations). The rate and the method of calculation for what each Card Organization considers excessive may be found in its Card Organization Rules. All fees related to processing Chargebacks, including any Excess Chargeback fees, are immediately due and payable to SERVICERS upon assessment.

**16. Representations; Warranties and Covenants.**

16.1 Without limiting any other warranties hereunder, CUSTOMER represents, warrants and covenants with SERVICERS and with the submission of each Card transaction reaffirms, the following representations, warranties and covenants

- (i) each Card transaction is genuine and arises from a bona fide transaction, permissible under the Card Organization Rules and Applicable Law, by the Cardholder directly with CUSTOMER;
- (ii) Each Card transaction represents a valid obligation for the amount shown on the Sales Draft, Preauthorized Order, or Credit Draft, and does not involve the use of a Card for any other purpose;
- (iii) each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;
- (iv) the amount charged for each Card transaction is not subject to any dispute, set off or counterclaim;
- (v) each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented or other payments to CUSTOMER and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Bankcard Addendum, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon CUSTOMER accepting and submitting that Card transaction for processing;
- (vi) with respect to each Card transaction, CUSTOMER has no knowledge or notice of any fact, circumstance or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that Card transaction or relieve that Cardholder from liability with respect thereto;
- (vii) each Card transaction is made in accordance with this Bankcard Addendum and Applicable Law; and
- (viii) each Sales Draft is free of any alteration not authorized by the related Cardholder;
- (ix) CUSTOMER has completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;
- (x) CUSTOMER is validly existing, in good standing and free to enter into this Bankcard Addendum;
- (xi) all information provided to SERVICERS in support of this Bankcard Addendum is true and correct;
- (xii) CUSTOMER is not doing business under a name or style not previously disclosed to SERVICERS;
- (xiii) CUSTOMER has not changed the nature of CUSTOMER's business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different merchant category code under Card Organization Rules, in a way not previously disclosed to SERVICERS;
- (xiv) CUSTOMER will use the Services only for CUSTOMER's own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person;
- (xv) CUSTOMER has not filed a bankruptcy petition not previously disclosed to SERVICERS;
- (xvi) CUSTOMER owns and controls the Settlement Account, and no security interest or lien of any type in favor of a Person exists regarding the Settlement Account or any Card transaction.
- (xvii) CUSTOMER will not at any time during the term of this Bankcard Addendum, or until all amounts due under this Bankcard Addendum have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person, without SERVICERS consent;
- (xviii) each Card transaction was made in accordance with the terms of this Bankcard Addendum.

16.2 SERVICERS represent and warrant to CUSTOMER that:

- (i) SERVICERS will perform their obligations pursuant to this Bankcard Addendum in accordance with the Applicable Law.
- (ii) SERVICERS are validly existing, in good standing and free to enter into this Bankcard Addendum;

**17. Retention of Records.**

17.1 Unless prohibited by the Card Organization Rules, CUSTOMER will retain, for a period of at least eighteen (18) months from the date of the Card transaction or such other longer period as may be required by the Card Organization Rules, legible copies or images (electronically or otherwise) of CUSTOMER's Sales Drafts, Cardholder consents for Pre-Authorized Orders and Credit Drafts. CUSTOMER's obligation to retain records does not provide authority for CUSTOMER to retain Card magnetic stripe data.

17.2 CUSTOMER will submit to SERVICERS a legible copy or image of a Sales Draft, Cardholder consent for a Pre-Authorized Order or Credit Draft if any Issuer requests one. CUSTOMER's deadline for providing to SERVICERS a legible copy or image of the requested Sales Draft, Cardholder consent for a Pre-Authorized Order or Credit Draft is ten (10) days after the date of the Issuer's retrieval request, or as specified in the notice from SERVICERS. CUSTOMER

acknowledges that CUSTOMER's failure to properly and timely respond to any retrieval request may result in a Chargeback.

**18. System Testing and System Enhancements**

18.1 SERVICERS reserve the right to conduct testing of the Merchant Systems for a period of time reasonably necessary for them to meet SERVICERS', the Merchant Equipment manufacturers', any third party integrators' and the Card Organizations' then-current applicable requirements. Throughout the term of this Bankcard Addendum, if CUSTOMER changes or modifies the Merchant Systems for any reason, including but not limited to modifications to accommodate changes in Card Organization Rules or Applicable Law, CUSTOMER will immediately notify SERVICERS of such changes or modifications, and SERVICERS will have a reasonable amount of time to conduct certification testing of the Merchant Systems to verify that it meets SERVICERS', any third party integrators' and the Card Organizations' then-current applicable requirements. The first such standard re-certification will be performed by SERVICERS at no cost to CUSTOMER; however, subsequent re-certifications will be billed to CUSTOMER at SERVICERS' then-current hourly rate. Notwithstanding anything to the contrary, by conducting implementation or certification testing, SERVICERS do not guarantee that CUSTOMER's transactions will qualify at the lowest possible interchange level. CUSTOMER assumes all liability resulting from CUSTOMER's failure to notify SERVICERS of the changes or modifications or CUSTOMER's refusal to allow SERVICERS to conduct the implementation or certification testing.

18.2 If, after the effective date of this Bankcard Addendum, CUSTOMER requests SERVICERS to perform or provide any system enhancements, custom reports, special files, terminal applications, related service enhancements or new services (collectively, "System Enhancements"), and SERVICERS agree to do so, these System Enhancements will be made in accordance with terms and conditions, including pricing, agreed to by the parties in writing

**19. Confidentiality**

19.1 In addition to the information security provisions elsewhere in the MSA and this Bankcard Addendum, neither CUSTOMER nor SERVICERS will use, store, disclose, sell or disseminate any Cardholder data obtained in connection with a Card transaction, except in accordance with the Card Organization Rules and Applicable Law (e.g., for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transactions). The foregoing will not apply in the instance of a court or governmental request, subpoena or order. SERVICERS may use any Cardholder data for purposes associated with BANK's role as an Issuer if such Cardholder data is derived from a Card transaction in which the Card used was issued by BANK. Further, in accordance with the Operating Guide, Card Organization Rules and Applicable Law, SERVICERS may participate in sharing Cardholder data among SERVICERS' Affiliates, other financial institutions, regulatory authorities, law enforcement agencies and any other Persons authorized by the Card Organization Rules and Applicable Law. In addition, SERVICERS may participate in sharing Cardholder data with any Card Organization or its designee at the request of that Card Organization.

19.2 SERVICERS will keep confidential, in accordance with Applicable Law and the Card Organization Rules, any information received by SERVICERS from CUSTOMER or CUSTOMER's agents regarding CUSTOMER's use of the Services, including any relationship and transaction information; provided, that SERVICERS may disclose such information (i) to Persons to the extent necessary to provide the Services, (ii) SERVICERS' respective auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by Applicable Law and (iv) to SERVICERS' respective Affiliates as SERVICERS deem appropriate. CUSTOMER acknowledges and agrees that any of information obtained by SERVICERS may be shared with SERVICERS' respective Affiliates, who have a need-to-know, in connection with the provision of the Services, as long as such Affiliates are under obligation to treat such information with the same degree of care as required of SERVICERS.

**20. Examinations, Audits and Corrective Action.**

20.1 SERVICERS' Rights. SERVICERS or their respective designees will have the right, during the term of this Bankcard Addendum and for one (1) year thereafter, upon reasonable advance written notice and during normal business hours, to conduct a review of the books, records, operations and Merchant Equipment of CUSTOMER, Merchant Providers and CUSTOMER's other third party service providers to determine or to verify CUSTOMER's and their compliance with CUSTOMER's obligations under this Bankcard Addendum.

20.2 Card Organization and Investigation. CUSTOMER will, upon reasonable prior written notice from SERVICERS and as directed by any Card Organization, permit any Person acceptable to that Card Organization to examine and audit the records, operations and Merchant Systems relevant to such Card Organization. The scope, standards and frequency of the examinations and audits will be determined by the Card Organization requesting it. The results, including, but not limited to any written reports of such examinations and audits, must be made available to the Card Organization requesting it and SERVICERS. All expenses related to such examinations and audits will be paid by CUSTOMER.

20.3 Remediation. CUSTOMER must promptly take corrective action acceptable to SERVICERS and the Card Organizations to rectify (i) any failure to comply with this Bankcard Addendum or any problem identified in any report, examination or audit that could reasonably be expected to have an adverse impact on SERVICERS, Issuers, Card Organizations or Cardholders and (ii) any control deficiencies identified in such report.

20.4 Regulatory Agencies. Notwithstanding anything to the contrary in Section 13 of the MSA and Sections 19 and 26 of this Bankcard Addendum, CUSTOMER agrees to provide reasonable access to Merchant Systems and CUSTOMER's facilities and records and those of Merchant Providers during normal business hours for examination purposes to any state or federal agencies with jurisdiction over SERVICERS or any Card Organization, upon SERVICERS' prior written request.



**21. Assignment.**

- 21.1 Any transfer or assignment of this Bankcard Addendum by CUSTOMER without SERVICERS' prior written consent, by operation of law or otherwise, is voidable at either SERVICERS' sole discretion. In the event of such transfer or assignment, the party to whom the Bankcard Addendum was transferred or assigned shall be bound to the terms and conditions of this Bankcard Addendum to the same extent as if SERVICERS and such assignee or transferee, as the case may be, entered into an agreement identical to this Bankcard Addendum on the effective date of such transfer or assignment. Furthermore, CUSTOMER shall indemnify and hold SERVICERS harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising in connection with such transferee's or assignee's, as the case may be, submission of Card transactions to SERVICERS for processing. For purposes of this Bankcard Addendum, any transfer of voting control of CUSTOMER or its parent shall be considered an assignment or transfer hereof.
- 21.2 Upon notice to CUSTOMER, another Visa and MasterCard member may be substituted for BANK under whose sponsorship this Bankcard Addendum is performed. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of BANK, including without limitation, as may be expressly required by applicable Card Organization Rules. Subject to Card Organization Rules, SERVICERS may assign or transfer this Bankcard Addendum and their respective rights and obligations hereunder and may delegate their respective duties hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without the notice to or consent of CUSTOMER.
- 21.3 Except as provided in the following sentence, this Bankcard Addendum shall be binding upon permitted successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Bankcard Addendum.
- 21.4 In the event that SERVICERS assign this Agreement to any third party, other than a wholly-owned subsidiary or as otherwise permitted herein, CUSTOMER may terminate this Agreement by giving at least sixty (60) days advance notice within sixty (60) days of CUSTOMER's receipt of SERVICER'S written notice of assignment. If CUSTOMER does not provide notice to SERVICERS of CUSTOMER's intent to terminate, or if SERVICERS cure the event to CUSTOMER's satisfaction within the aforementioned sixty (60) day period, CUSTOMER's right to terminate under this provision shall be deemed waived and this Agreement shall continue in full force and effect.

**22. Term; Events of Default.**

- 22.1 This Bankcard Addendum and the applicable Schedules shall become effective upon the date this Bankcard Addendum and the applicable Supplements are signed by BANK, which shall in all instances be on or after the date(s) CUSTOMER and SERVICERS sign this Bankcard Addendum and the applicable Supplements.
- 22.2 The initial term and any subsequent terms of this Bankcard Addendum shall commence and shall continue in force as described in Subsection 2.1 of the MSA.
- 22.3 If any of the following events shall occur (each an "Event of Default"):
- (i) a material adverse change in the business, financial condition, business procedures, products or services of CUSTOMER; or
  - (ii) any assignment or transfer of voting control of CUSTOMER or its parent; or
  - (iii) a sale of all or a substantial portion of CUSTOMER's assets; or
  - (iv) irregular Card sales by CUSTOMER, excessive Chargebacks or any other circumstances which, in SERVICERS' sole discretion, may increase SERVICERS' exposure for CUSTOMER's Chargebacks or otherwise presents a financial or security risk to SERVICERS; or
  - (v) any representation, warranty or covenant of CUSTOMER in this Bankcard Addendum is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or
  - (vi) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Bankcard Addendum, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 23, or the Information Security requirements as detailed in Section 26;
  - (vii) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any respective Affiliate of SERVICERS, including, but not limited to, any agreement governing check guarantee or check verification services; or
  - (viii) CUSTOMER shall default in the payment when due, whether upon maturity or otherwise, of any material indebtedness for borrowed money or any material trade payable; or
  - (ix) CUSTOMER shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
  - (x) a case or other proceeding shall be commenced against CUSTOMER, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy,

- insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of CUSTOMER, or of all or any substantial part of the assets, domestic or foreign, of CUSTOMER, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against CUSTOMER (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered; or
- (xi) the independent certified accountants retained by CUSTOMER shall refuse to deliver an unqualified opinion with respect to the annual financial statements of CUSTOMER and its consolidated subsidiaries;

then, upon the occurrence of (1) an Event of Default specified in subparagraphs (iv), (vi), (ix) or (x) above, SERVICERS may consider this Bankcard Addendum to be terminated immediately, without notice, and all amounts payable hereunder by CUSTOMER to SERVICERS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by CUSTOMER, and (2) any other Event of Default, this Bankcard Addendum may be terminated by SERVICERS by giving not less than ten (10) days' notice to CUSTOMER, and upon such notice all amounts payable hereunder by CUSTOMER to SERVICERS shall be due and payable on demand.

22.4 Neither the expiration nor termination of this Bankcard Addendum shall terminate the obligations and rights of the parties pursuant to provisions of this Bankcard Addendum which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of this Bankcard Addendum.

22.5 If any Event of Default shall have occurred and be continuing, SERVICERS may, in their sole discretion, exercise all of their rights and remedies under Applicable Law, including, without limitation, exercising their rights under Section 23.

22.6 This Bankcard Addendum also may be terminated by SERVICERS prior to the then-current expiration date upon at least 90 days' advance written notice, if CUSTOMER's Card transactions fail to conform to the volume or average transaction size representations as set forth in the Supplements.

22.7 This Bankcard Addendum also may be terminated by SERVICERS without notice or penalty, if in their sole discretion, such termination is necessary for SERVICERS to comply with their obligations under any Applicable Law, rule or regulation including, but not limited to, the Office of Foreign Assets Control ("OFAC") Regulations and Card Organization Rules. SERVICERS' termination of this Bankcard Addendum pursuant to this Subsection 22.7 shall not be deemed a breach of contract by SERVICERS.

22.8 If this Bankcard Addendum is terminated for cause, CUSTOMER acknowledges that SERVICERS may be required to report CUSTOMER's business name and the names and other identification of its principals to the terminated merchant files maintained by the Card Organizations. CUSTOMER expressly agrees and consents to such reporting in the event CUSTOMER is terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by a Card Organization. Furthermore, CUSTOMER agrees to waive and hold SERVICERS harmless from and against, any and all claims which CUSTOMER may have as a result of such reporting.

22.9 In addition to the provisions of the MSA that survive termination, the terms and provisions governing CUSTOMER's obligations and liabilities and SERVICERS' rights regarding the following matters will survive termination until all these matters are resolved or settled and all amounts owed to SERVICERS regarding these matters are fully paid: (i) processing and settlement of Card transactions, Sales Drafts and Credit Drafts, (ii) adjustments, (iii) all amounts due SERVICERS under this Bankcard Addendum, (iv) the resolution of any Chargebacks, disputes or other issues involving Card transactions, (v) Compromised Data Events and (vi) all SERVICERS' rights regarding CUSTOMER's breach of any of its agreements, representations, warranties, covenants or other obligations under this Bankcard Addendum. In addition to the above and any terms and provisions which by their terms or nature survive termination, the terms and provisions of Sections 9, 14 through 21, inclusive, 23 through 27, inclusive, Subsection 22.7 and this Subsection 22.9 shall survive any termination of this Bankcard Addendum. Upon termination of this Bankcard Addendum, CUSTOMER agrees to immediately send SERVICERS all the data relating to Card transactions made up to the date of termination.

22.10 After termination of this Bankcard Addendum for any reason whatsoever, CUSTOMER shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this Bankcard Addendum and all other amounts then due or which thereafter may become due to SERVICERS under this Bankcard Addendum or which may be due to SERVICERS before or after such termination to either SERVICERS or any of SERVICERS' respective Affiliates for any related equipment or related services.

22.11 This Agreement may be terminated by CUSTOMER, without penalty, upon thirty (30) days prior written notice and concurrent cure period in the event SERVICERS breach a material obligation under this Agreement.

**23. Reserve Account; Security Interest.**

23.1 CUSTOMER expressly authorizes SERVICERS to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 23. The initial amount of such Reserve Account shall be set by SERVICERS, in their sole discretion, based upon CUSTOMER processing history and the anticipated risk of loss to SERVICERS.

23.2 The Reserve Account shall be fully funded upon three days' notice to CUSTOMER, or in instances of fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to CUSTOMER's Settlement Account or any other accounts held by BANK or any of its Affiliates; (ii) one or more deductions or off sets to any payments otherwise due to CUSTOMER; (iii) CUSTOMER's delivery to SERVICERS of a letter of credit; or (iv) if SERVICERS so agree, CUSTOMER's pledge to

SERVICERS of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to SERVICERS and shall be in a form satisfactory to SERVICERS. In the event of termination of this Bankcard Addendum by either CUSTOMER or SERVICERS, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by BANK for the greater of ten months after termination of this Bankcard Addendum or for such longer period of time as is consistent with BANK's liability for Card transactions in accordance with Card Organization Rules. CUSTOMER's funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of BANK's customers, without involvement by an independent escrow agent. SERVICERS will hold funds pursuant to this Section 23 in master account(s) with your funds allocated to separate sub accounts.

23.3 If CUSTOMER's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from CUSTOMER, or if the funds in the Reserve Account have been released, CUSTOMER agrees to promptly pay SERVICERS such sums upon request. In the event of a failure by CUSTOMER to fund the Reserve Account, SERVICERS may fund such Reserve Account in the manner set forth in Subsection 23.2 above.

23.4 To secure CUSTOMER's performance of CUSTOMER's obligations under this Bankcard Addendum, and any other agreement for the provision of related equipment or related service CUSTOMER grants SERVICERS security interests in each transaction and its proceeds, the Settlement Account, the Reserve Account and any other depository, reserve or bank account held by CUSTOMER with SERVICERS, the Settlement Account at any other financial institution, whether now existing or established in the future, and in the balances and proceeds of all those accounts, any funds due CUSTOMER from SERVICERS and any of CUSTOMER's property held by SERVICERS and SERVICERS' respective Affiliates. SERVICERS may enforce these security interests without notice or demand to the extent permitted by the Card Organization Rules and Applicable Law. The security interests granted under this Bankcard Addendum will survive the termination of this Bankcard Addendum until all CUSTOMER's obligations are irrevocably paid and performed in full. In addition, CUSTOMER's assent to the terms of this Bankcard Addendum will be considered CUSTOMER's agreement to obtain and execute an appropriate control agreement, pursuant to Article 9 of the Uniform Commercial Code, among CUSTOMER, SERVICERS and any other financial institution, under which agreement SERVICERS, CUSTOMER and that other financial institution agree to the disposition of funds in the Settlement Account, the Reserve Account or any other account or property subject to the security interest in this Bankcard Addendum without further consent by CUSTOMER, provided that such agreement will not obligate CUSTOMER to pay additional fees to SERVICERS. In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, SERVICERS are hereby authorized by CUSTOMER at any time and from time to time, without notice or demand to CUSTOMER or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of CUSTOMER's obligations to SERVICERS and their respective Affiliates under this Bankcard Addendum and any other agreement with SERVICERS or any of SERVICERS' respective Affiliates for any related equipment or related services (including any check guarantee and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured.

24 **Indemnification.** In addition to the indemnity obligations set forth in Section 4 of the MSA, CUSTOMER agrees to indemnify and hold harmless SERVICERS from and against all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from any breach of any representation, warranty, covenant, provision of this Bankcard Addendum or any misrepresentation by CUSTOMER under this Bankcard Addendum, or arising out of any gross negligence or willful misconduct of CUSTOMER, its employees, or agents in connection with CUSTOMER's Card transactions or otherwise arising from CUSTOMER's provision of goods and services to Cardholders. To the extent applicable, CUSTOMER's liability will be subject to the Kansas Tort Claims Act, including liability limits provided in the Kansas Tort Claims Act.

25. **Liquidated Damages.**

25.1 The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under Applicable Law and, notwithstanding anything to the contrary elsewhere in this Bankcard Addendum, if (i) CUSTOMER breaches this Bankcard Addendum by improperly terminating it prior to the expiration of the applicable term of the Bankcard Addendum, or (ii) this Bankcard Addendum is terminated prior to the expiration of the applicable term of the Bankcard Addendum in accordance with, and due to, an Event of Default by CUSTOMER specified in Subsection 22.3, then SERVICERS will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent the damages which would actually be sustained by SERVICERS as the result of such a termination, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre-estimate of SERVICERS' probable loss, which shall be paid to SERVICERS as liquidated damages in the event of any such termination. Any recovery pursuant to this Section 25 shall in no way limit SERVICERS' right to receive any payments due from CUSTOMER pursuant to Section 14. Such liquidated damages shall be paid to SERVICERS within 15 days after CUSTOMER's receipt of SERVICERS' calculation of the amount due. The liquidated damages amount shall equal 50% of the product of (a) the average net monthly fees, as determined in accordance with Subsection 25.2, and (b) the number of months, including any pro rata portion of a month, then remaining in the initial term or any renewal term, as applicable

25.2 The average net monthly fees shall equal one-twelfth of the gross fees payable pursuant to the Supplements, less applicable interchange fees and assessments due pursuant to this Bankcard Addendum, during the 12 months immediately preceding the date on which (i) SERVICERS receive notice from CUSTOMER of its intention to terminate this Bankcard Addendum early, or (ii) SERVICERS learn of CUSTOMER's early termination in violation of this Bankcard Addendum, or (iii) this Bankcard Addendum is terminated early pursuant to subsection 22.3 (whichever produces the higher amount); provided, however, if the Bankcard Addendum has been in place less than 12 months, the estimated average net monthly fees shall equal the aggregate gross fees paid hereunder by CUSTOMER, divided by the number of months the Bankcard Addendum was effective.

25.3 Liquidated Damages as defined herein shall not apply to any automatic renewal period.

**26. Information Security.**

26.1 **Data Protection.** CUSTOMER must, and must ensure that Merchant Providers, have proper security measures in place for the protection of Cardholder data, and comply with the Data Security Standards adopted by the PCI Security Standards Council, LLC (as amended, the "PCI DSS"), which may be reflected in the Visa Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection Program ("SDP") and Discover Network's Information and Security Compliance ("DISC"), in addition to all other Card Organization Rules, now or in the future. Additional information regarding the CISP, SDP programs and DISC is available at the Visa web site, [www.visa.com/cisp](http://www.visa.com/cisp), the MasterCard web site, [www.mastercard.com/banksdp/](http://www.mastercard.com/banksdp/), Discover Network's web site, [www.DiscoverNetwork.com/fraudsecurity/disc.html](http://www.DiscoverNetwork.com/fraudsecurity/disc.html), and at the PCI DSS web site: <http://www.PCISecurityStandards.Org>, as those links may be updated by such parties, respectively, from time to time. In addition, when available, CUSTOMER must use only services and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations. CUSTOMER must have written agreements with Merchant Providers requiring such compliance. CUSTOMER is responsible for demonstrating CUSTOMER's and Merchant Providers' compliance with the CISP, SDP, DISC, and PCI DSS programs and providing SERVICERS or SERVICERS' designee with reasonable access to CUSTOMER's Locations and facilities, and ensuring that Merchant Providers provide reasonable access to their facilities, to verify CUSTOMER's and Merchant Providers' ability to prevent security violations.

26.2 **Controls.** CUSTOMER must, and must ensure that all Merchant Providers, have, maintain, and use at all times proper controls as specified in the Card Organization Rules and Applicable Law for secure storage of, limited access to, and rendering unreadable prior to discarding, all records containing Cardholder data, Card imprints and Cardholder signatures. CUSTOMER must not retain or store magnetic stripe or PIN data after a transaction has been authorized. If CUSTOMER stores any electronically captured Cardholder signature, CUSTOMER may reproduce such signature only upon SERVICERS' request.

26.3 **Costs.** In addition to CUSTOMER's obligations as set forth in Section 4 of the MSA and Sections 14 and 24 of this Bankcard Addendum, if CUSTOMER or a Merchant Provider (or other Person used by CUSTOMER) is determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information (together, "Compromised Data Event") and regardless of CUSTOMER's belief that CUSTOMER has complied with the Card Organization Rules and Applicable Law or any other security precautions and is not responsible for the Compromised Data Event, CUSTOMER must promptly pay SERVICERS for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against SERVICERS (together, "Data Compromise Losses").

26.4 **Issuer Costs.** In addition to CUSTOMER's obligations in Section 4 of the MSA and Sections 14 and 24 and Subsection 26.3 of this Bankcard Addendum, CUSTOMER must pay SERVICERS promptly for all expenses and claims made by Issuers against SERVICERS alleging CUSTOMER's responsibility for the loss, disclosure, theft or compromise of Cardholder data or transaction data, apart from any claim procedures administered by the Card Organizations.

26.5 **Compromised Data Event Appeals.** If SERVICERS are allowed under the Card Organization Rules to contest or appeal any claim of an Issuer, or any amount assessed by a Card Organization against SERVICERS, which CUSTOMER is obligated to pay under this Section 26, CUSTOMER will be given the opportunity to advise whether CUSTOMER wishes SERVICERS to contest or appeal the claim, assessment, penalty or fine. The decision to contest or appeal will be in SERVICERS' reasonable discretion, and if CUSTOMER asks SERVICERS to contest or appeal, all related costs will be paid by CUSTOMER. Any amount returned to SERVICERS as a result of the contest or appeal will be promptly refunded to CUSTOMER.

26.6 **Notice of Data Breach.** CUSTOMER will (i) immediately notify SERVICERS of any suspected, alleged or confirmed Compromised Data Event, regardless of the source, including any from any Merchant Provider, and (ii) engage, at CUSTOMER's expense, a certified forensic vendor acceptable to SERVICERS and the Card Organizations no later than the time required by a Card Organization, which may be no longer than 24 hours following CUSTOMER's suspected or actual discovery of that Compromised Data Event. If required by a Card Organization, SERVICERS will engage a forensic vendor approved by a Card Organization at CUSTOMER's expense. CUSTOMER must cooperate with the forensic vendor so that it may immediately conduct an examination of Merchant Equipment, Merchant Systems, and CUSTOMER's and Merchant Providers' procedures and records and issue a written report of its findings. CUSTOMER agrees that upon CUSTOMER's suspected or actual discovery of a Compromised Data Event, CUSTOMER will not alter or destroy any related records. CUSTOMER agrees to maintain complete and accurate documentation regarding any modifications made to the records. CUSTOMER will share with SERVICERS information related to CUSTOMER's or any Card Organization's investigation related to any actual or suspected Compromised Data Event (including, but not limited to, forensic reports and systems audits), and SERVICERS may share that information with Card Organizations.

26.7 **System Scans.** Upon notice to CUSTOMER, SERVICERS or SERVICERS' respective representatives may conduct remote electronic scans of Merchant Systems, similar to those conducted under the PCI DSS, to confirm compliance with the requirements of the PCI DSS and similar requirements of the Card Organizations. CUSTOMER must promptly cooperate with SERVICERS to facilitate the scans.

26.8 **Increased Fees for Non-Compliance.** In addition to any other permitted action, if SERVICERS determine that CUSTOMER is not in compliance with any of the data security requirements imposed by this Bankcard Addendum, the fees for authorizing and processing transactions under this Bankcard Addendum may be increased by 25% (in addition to CUSTOMER's obligation to reimburse SERVICERS for any Data Compromise Losses and Issuer Costs) until such time as SERVICERS are satisfied that CUSTOMER has adequately corrected such noncompliance or CUSTOMER demonstrates that CUSTOMER has adequately corrected the noncompliance as evidenced by an independently produced report of compliance provided in accordance with Card Organization procedures.

26.9 **SERVICER Requirements.** SERVICERS must comply with all applicable Card Organization Rules, including without limitation, those related to PCI DSS. SERVICERS may in their sole discretion, suspend or terminate Services under this Bankcard Addendum for any Compromised Data Event.

27. **Notices**

The notice address for FDS shall be as set forth in Section 16 of the MSA; the notice address for BANK shall be: 1231 Durrett Lane, Louisville, KY 40213, Attention: Operations Manager, with a copy to BANK's Legal Department-Merchant Services Group, at Bank of America, N.A., Bank of America Plaza, 101 South Tryon Street, Mail Code: NC1-002-29-01, Charlotte, North Carolina, 28255-0001; Facsimile: 704-719-5308.

28. **Card Organization Disclosure**

Member Bank Information: Bank of America, NA

The BANK's mailing address is 1231 Durrett Lane, Louisville, KY 40213 and its phone number is 800-430-7161.

**Important Member Bank Responsibilities**

- (a) The BANK is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant
- (b) The BANK must be a principal (signer) to this Bankcard Addendum.
- (c) The BANK is responsible for educating Merchants on pertinent Card Organization Rules with which Merchants must comply; but this information may be provided to CUSTOMER by BANK.
- (d) The BANK is responsible for and must provide settlement funds to the CUSTOMER in accordance with the terms of this Bankcard Addendum.
- (e) The BANK is responsible for all funds held in reserve that are derived from settlement.

**Important Merchant Responsibilities**

- (a) Ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and Chargebacks below Card Organization thresholds.
- (c) Review and understand the terms of the Bankcard Addendum.
- (d) Comply with Card Organization Rules.

The parties hereto have caused this Bankcard Addendum to be executed by their duly authorized officers. **THIS BANKCARD ADDENDUM IS NOT BINDING UPON SERVICERS UNTIL SIGNED BY SERVICERS.**

STATE OF KANSAS

("CUSTOMER")

By: Chris Howe

Name: CHRIS HOWE

(Please Print or Type)

Title: DIRECTOR OF PROCUREMENT

Date: 2/27/12

BANK OF AMERICA, N.A.

("BANK")

By: BANK OF AMERICA MERCHANT SERVICES, LLC,  
PURSUANT TO A LIMITED POWER OF ATTORNEY

Name: Ed Sykes

(Please Print or Type)

Title: SVP

Date: 2/20/12

FIRST DATA SERVICES, LLC

("FDS")

By: Ed Sykes

Name: Ed Sykes

(Please Print or Type)

Title: SVP

Date: 2/20/12



## **ANNEX 1**

The following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

**"Acquirer"** means Bank, in the case of MasterCard, Visa and certain debit Card transactions, and Processor, in the case of Discover Network Card transactions.

**"Affiliate"** means a Person that, directly or indirectly, (i) owns or controls a party to this Bankcard Addendum or (ii) is under common ownership or control with a party to this Bankcard Addendum.

**"Agreement"** means, collectively, the MSA, this Bankcard Addendum (including the Supplements) and the Operating Guide, as each may be amended from time to time.

**"Applicable Law"** means all federal, state and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to this Bankcard Addendum, the transactions or other matters contemplated under this Bankcard Addendum (including, without limitation, the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury), and all amendments thereto; and with respect to Bank, also guidance by its financial institution regulators.

**"Authorization"** means an approval by, or on behalf of, the Issuer to validate a Card transaction. An Authorization indicates only the availability of the Cardholder's credit limit or funds at the time the Authorization is requested.

**"Bankruptcy Code"** means title 11 of the United States Code, as amended from time to time.

**"Business Day"** means a day (other than Saturday or Sunday) on which SERVICERS are generally open for business.

**"Card"** - See either Credit Card or Debit Card.

**"Cardholder"** means a Person whose name is embossed on the Card and any authorized user of such Card.

**"Card Organization"** means any entity formed to administer and promote Cards, including Visa U.S.A., Inc. ("Visa"), MasterCard International Incorporated ("MasterCard") and DFS Services LLC ("Discover Network"), and any applicable Debit Networks

**"Card Organization Rules"** means the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBT, the Quest Operating Rules and with respect to PIN debit Cards, the rules, regulations, policies and procedures of the applicable Debit Network).

**"Chargeback"** means a Card transaction (or disputed portion thereof) that is returned to SERVICERS by the Issuer, the liability of which is the CUSTOMER's responsibility.

**"Credit Card"** means a valid device bearing Organization the Mark of Visa, MasterCard or Discover Network and authorizing the Cardholder to buy goods or services on credit and, to the extent the Supplements so provide, a valid device authorizing the Cardholder to buy goods or services on credit and issued by any other Card Organization specified on such Supplements.

**"Credit Draft"** means a document evidencing the return of merchandise by a Cardholder to CUSTOMER, or other refund or price adjustment made by the CUSTOMER to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and Applicable Law.

**"Debit Card"** - See either PIN Debit Card or Non-PIN Debit Card.

**"Debit Network"** means the telecommunications and processing system of a shared electronic funds transfer network.

**"Discount Rate"** means a percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as further described in Subsection 14.1 of this Bankcard Addendum and in the Fee Schedule. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Subsection 14.1 of this Bankcard Addendum and the Fee Schedule.

**"Electronic Benefits Transfer" ("EBT")** means the electronic transfer of government benefit funds to individuals through the use of Card technology with point of sale terminals, as further described in the applicable Addenda.

**"EBT Network"** means a shared electronic funds transfer network that is used by its members to assist government agencies in the distribution of benefits to eligible Recipients, whether such benefits are for the delivery of services or the transfer of funds or information.

**"Electronic Commerce Transaction" ("ECT")** means a Card transaction that occurs on the Internet, as further described in Section 7.

**"FDS Software"** means Software licensed to CUSTOMER by FDS, including any third party Software FDS sublicensed to CUSTOMER.

**"FDS Systems"** means any and all Card-related information reporting, operating and processing systems used by FDS or Persons on FDS' behalf, including, without limitation, hardware, FDS Software, related documentation, technical formats and specifications, technical and business information related to inventions, present and future products and product lines, intellectual property, know-how, and any other information that is identified as FDS' systems, whether owned by FDS or Persons used by FDS.

**"Fee Schedule"** means the fee schedules provided with this Bankcard Addendum, including, without limitation, Schedule A and any attachments thereto, and all additions or changes SERVICERS make to them, whether contained in updated versions or in separate communications.

**"Issuer"** means the Card Organization or its financial institution member that has provided a Card presented to CUSTOMER by a Cardholder for a Card transaction.

**"Location"** means a physical location, internet address, division, processing method or business activity for which (i) CUSTOMER has requested and SERVICERS have approved the assignment of a unique merchant account number or (ii) SERVICERS have otherwise determined a unique merchant account number is required and have assigned it.

**"Merchant Equipment"** means any and all equipment CUSTOMER uses in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and Software (excluding FDS Software), Purchased Equipment and Merchant Systems, point-of-sale terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by CUSTOMER, Merchant Providers or other Persons used by CUSTOMER.

**"Merchant Provider"** means any Person engaged by CUSTOMER to provide services to CUSTOMER involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

**"Merchant Systems"** means any and all Card acceptance and processing systems used by CUSTOMER (except FDS Systems), including, without limitation, Software (except FDS Software), related documentation, technical formats and specifications, technical and business information related to inventions and present and future products and product lines, intellectual property, know-how, and any other information that is identified as CUSTOMER's systems, whether owned by CUSTOMER or Merchant Providers or other Persons used by CUSTOMER.

**"Non-PIN Debit Card"** means a device with a Visa, MasterCard or Discover Network Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

**"Operating Guide"** means the then-current manual prepared by SERVICERS, containing operational procedures, instructions and other directives relating to Card transactions, as amended from time to time.

**"Person"** means a third party individual or entity, other than the CUSTOMER, FDS or Bank.

**"PIN"** means the Personal Identification Number used by a Cardholder to complete a PIN debit Card transaction.

**"PIN Debit Card"** means a device bearing the Marks of ATM networks (such as NYCE or Star) used at a Location by means of a Cardholder-entered PIN in the merchant PIN Pad.

**"Pre-Authorized Order"** means any Card transaction permitted by this Bankcard Addendum for which a Cardholder provides CUSTOMER advance permission to charge the Cardholder's Card for recurring sales, delayed delivery orders or other preauthorized orders.

**"Purchased Equipment"** means any and all Merchant Equipment sold to CUSTOMER by FDS (or its applicable Affiliate) pursuant to this Bankcard Addendum or any Supplement.

**"Reserve Account"** means an account established and funded at SERVICERS' request or on CUSTOMER's behalf, pursuant to Section 23 of this Bankcard Addendum.

**"Sales Draft"** Evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

**"Settlement Account"** means an account or accounts at a financial institution designated by CUSTOMER as the account to be debited and credited by SERVICERS for Card transactions, fees, Chargebacks and other amounts due hereunder or in connection herewith (e.g., fines, penalties, attorneys' fees, etc.).

**"Software"** means any and all software, computer programs, related documentation, technology, knowhow and processes embodied in or provided in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, whether equipment, PC, server or Internet based.

**"Terminal"** means a device placed in a Location which is connected to the FDS Systems via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales Card transactions.

**Schedule A to Merchant Services Bankcard Addendum  
Fee Schedule**

Merchant Name:	State of Kansas	Average Ticket:	\$90.77
Contract Term (Years):	5 Years	Annual Bankcard Volume:	\$90,424,959.00
Pricing Method:	Interchange Plus	Fee Collection Frequency	Monthly
Processing Fees:	*Authorization Fee- Per Authorization Attempt		
	**Per Item Fee- Per Settled Transaction		
Card Type	Auth Fee*	Per Item Fee**	
VS/MC/Discover Full Service	\$0.04	\$0.04	
Discover Conveyed	\$0.04	\$0.00	
America Express	\$0.04	N/A	
PIN Debit	\$0.20	\$0.00	
Discount Rates	The discount rate is charged as a % of total gross dollar volume		
Discount Rate Credit	0.00%	% of sale on Visa/MC/DS Full Service Credit Volume	
Discount Rate Signature Debit	0.00%	% of sale on Visa/MC/DS Full Service Debit Volume	
Other Fees			
Chargeback Fees	\$5.00	Per Chargeback	
ACH Reject Fee	\$25.00	Per ACH Returned Item	
Pin Debit Adjustment Fee	Waived	Per Pin Debit Adjustment	
Paper Statement Fee	Waived	Per Statement Mailed	
Franchise Per Location Fee	N/A	Per Franchise Location Per Month	
ClientLine	Waived	Per ClientLine Sign-On	
Voice Auth/ARU Fees	\$0.55	Per Voice Auth/ARU Item	
ACH Deposit Fee	Waived	Per ACH Deposit	
Billback Surcharge Fee	0.00%	% of Sale For Each Downgraded Transaction	
Hypercom T4210	\$375.00	Per Device	
Verifone VX570 Terminal	\$450.00	Per Device	
Optional Gateways			
First Data Global Gateway Set Up Fee	\$99.00	One Time Fee Per FDGG MID Set Up	
First Data Global Gateway Monthly Fee	\$25.00	Per Month Per FDGG MID	
Additional Gateway Authorization Fee	\$0.05	Per Gateway Authorization-All Card Types	
First Data e4SM Gateway Set Up Fee	\$199.00	One Time Fee Per e4 MID Set Up	
First Data e4SM Gateway Monthly Fee	\$25.00	Per Month e4SM MID	
Additional Per Item Gateway Fee e4SM	\$0.05	Per Gateway Item - All Card Types	
Cybersource SBB Set Up Fee	\$150.00	One Time Per SBB MID Set Up	
Cybersource SBB Monthly Fee	\$19.95	Per Month MID	
Cybersource SBB Per Item/Internet Trans Fee	\$0.10	Per Item/Internet Trans Fee	
Cybersource SBC Set Up Fee	\$175.00	One Time Per SBC MID Set Up	
Cybersource SBC Monthly Fee	\$25.00	Per Month MID	
Cybersource SBC Per Item/Internet Trans Fee	\$0.20	Per Item/Internet Trans Fee	
Skipjack Set Up Fee	\$59.99	One Time Per Skipjack MID	
Skipjack Monthly Fee	\$13.00	Per Month MID	
Skipjack Per Item/Internet Trans Fee	\$0.05	Per Item/Internet Trans Fee	

<b>Optional Mobile Solutions</b>		
First Data Mobile Pay Web One Time Set Up Fee	\$19.95	Per Terminal ID
First Data Mobile Pay Web Multi-User Month Fee	\$12.99	Per Terminal ID (max 5 users per TID)
First Data Mobile Pay Web Single User Monthly Fee	\$9.99	Per Terminal ID
First Data Mobile Application One Time Set Up Fee	\$19.95	Per User/Per Terminal ID
First Data Mobile Application MSR	NA	One per MID at No Charge
First Data Mobile Application MSR	\$23.99	Each Additional User/TID per MID
First Data Mobile Application Single User Monthly Fee	\$9.99	Per User/Per Terminal ID
Verifone Payware Mobile Set Up Fee	\$149.00	Per MID
Verifone Payware Mobile Monthly Fee	\$15.00	Per MID
Verifone Payware Sleeve	\$50.00	Per MID
<b>Optional Software</b>		
ICVerify 4.0 Windows, New Single User	\$324.00	
ICVerify 4.0 Windows, New Multi User	\$399.00	
ICVerify 4.0 Windows, Single User Upgrade	\$174.00	
ICVerify 4.0 Windows, Multi User Upgrade	\$184.00	
ICVerify 4.0 Windows, Setup	\$80.00	
ICVerify 4.0 Windows, Additional User	\$80.00	
ICVerify 4.0 Valcode - Add MIDS	\$80.00	
ICVerify 4.0 Valcode-Change Merchant#/Processor	\$80.00	
MasterCard MIP Connection	N/A	Per Month Per Connection
Visa DEX Connection	N/A	Per Month Per Connection
Equipment other than on fee schedule	N/A	Quoted As Requested/Wifi/GPS Fees May Apply
Supplies	N/A	Quoted As Requested
Software other than on fee schedule	N/A	Quoted As Requested
Other		
Other		
All telecommunications costs/Third Party Fees will be passed through to CUSTOMER.		

<b>Interchange Schedules and Qualifications Attachments</b>	
Visa/MasterCard/Discover Interchange	BAMS.MVD.F11.2.IC__Gross
PIN Debit Switch and Interchange Fees	2011 BAMS Debit Network Standard Fees FD effective November 1

Capitalized terms not defined above are defined in the Merchant Services Bankcard Addendum ("Bankcard Addendum") to which this Schedule A is attached.

1. The Bankcard Service Fees above are per Visa, Discover and/or MasterCard transaction. Sales plus Interchange and Assessments will be charged daily.
2. The qualifying criteria set forth in Attachment I annexed hereto may be changed from time to time as mandated by the Card Organizations.
3. The transaction fees set forth in Schedule A are based on the average ticket and annual bankcard volume set forth above, and CUSTOMER's transactions qualifying at the Target Qualification interchange levels set forth above (the "Qualifying Interchange Level(s)"). The Qualifying Interchange Levels above are anticipated assumptions. The interchange applicable to each transaction will be based on the actual qualification level of the transaction. For each transaction not at the Qualifying Interchange Level identified above, we will charge you an additional fee as described below.

#### Important Information About Your Fees

##### Interchange

A significant amount of the fees that we charge you for processing your transactions consists of charges that we must pay to issuing banks (or that are otherwise charged to us by the Card Organizations) under the Card Organization Rules. These charges are often referred to as "Interchange fees" or simply "interchange". Interchange fees are set by the Card Organizations based upon a series of Interchange levels that they establish and modify from time to time. Thus, the Interchange fee charged for a given transaction depends on the Interchange level applicable to that transaction; and that interchange level depends on a number of factors established by the Card Organizations, such as the type of Payment Instrument presented, specific information contained in the transaction, how and when the transaction is processed, your industry and other factors. For a transaction to qualify at any specific interchange level, the applicable qualification criteria must be met. Note that the Card Organizations regularly add new Interchange levels, and change the Interchange rates and qualification criteria for existing Interchange levels.

##### Target Discount Rate and Target Qualification Level

The Target Qualification Level is the Interchange level that we expect to apply to your transactions. It is determined based on the type of transactions you submit and how they will most likely be processed. However, it is possible that some or many of your transactions will downgrade to a more costly Interchange level, resulting in higher interchange. This may occur because those "Non-Qualified Transactions" do not meet the criteria to qualify at your Target Qualification Level. FDS has set your Target Qualification Level (as set forth in this Schedule A) based on the assumption that all of your transactions will satisfy the criteria established by the Card Organization Rules to meet that qualification level. The actual Interchange applicable to each transaction though, will be based on the actual qualification level of the transaction.

**Non-Qualified Transactions**

Non-Qualified Transaction will qualify at a level resulting in Interchange fees higher than those applicable to your Target Qualification Level. For processing each such Non-Qualified Transaction, we will charge you both the actual Interchange applicable to the transaction and a - "Billback" as defined below (or elsewhere on this Schedule A). The total of any - billback will appear on your statement.

**Billback**

Billback is the difference between the target interchange level and the higher interchange level the transaction qualified at.

**Non-Qualified Surcharge:** a fee assessed by Servicers for processing a Non-Qualified Transaction, and is calculated as a percentage of the amount of the Non-Qualified Transaction. The Non-Qualified Surcharge applicable to your Non-Qualified Transaction is 0.00%.

4. **Equipment Costs:** see

5. **Card Organization Pass Through Fees:**

In addition to the interchange rates, SERVICERS may pass through to CUSTOMER any fees assessed to SERVICERS by the Card Organizations, including but not limited to, new fees, fines, penalties and assessment imposed by the Card Organizations. These pass through fees include the following:

**VISA FEES:** The following fees result from charges assessed to SERVICERS from Visa and are subject to increases, decreases and additional new fees imposed by Visa.

<u>Fee/Name</u>	<u>Fee/Description</u>
VISA ASSESSMENT	.11% of the total dollar amount of all Sales Drafts.
VISA KILOBYTE FEE	\$0.0025 per kilobyte.
VISA ZERO DOLLAR VERIFICATION FEE	\$0.025 assessed on ALL Account Verification messages submitted for \$0.00, including both approved and declined, AVS, and SMS account verification messages.
VISA ZERO FLOOR LIMIT FEE	\$0.10 assessed on all clearing transactions when the Transaction ID on the Authorization does not match the Transaction ID on the Clearing. Fee also applies when Transaction ID is missing altogether.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF)	\$0.0195 assessed on all Visa authorizations, including POS Check, to merchants not using Visa's Merchant Direct Exchange (MDEX). Merchants using MDEX shall be assessed \$0.0145, shown as an increase to the variable V.I.P. Access Fee. The NAPF fee will not apply to Account Verification messages, pre-authorization requests, Interlink/PLUS PIN Debit, adjustment messages, authorization reversals, and other administrative messages.
VISA AUTHORIZATION SYSTEM MISUSE FEE (MISUSE)	\$0.045 per authorization that is not followed by a matching Visa clearing (or is not properly reversed in the case of a cancelled/voided transaction) as shown by a matching transaction ID.
VISA INTERNATIONAL SERVICE FEES (FOR PURCHASE TRANSACTIONS)	0.40% of the source amount on U.S. Acquired Original Purchase transactions when the Issuer Country is different from the Merchant Country.
VISA INTERNATIONAL SERVICE FEES (FOR CASH ADVANCE TRANSACTIONS)	0.40% of the source amount on U.S. Acquired Cash Disbursement transactions when the Issuer Country is different from the Merchant Country.
U.S. VISA INTERNATIONAL HIGH RISK ACQUIRER FEE (IAF)	0.45% per transaction conducted at U.S. merchant locations with a non-U.S. issued card; applicable to high-risk merchants in MCCs 5962 (Direct Marketing – Travel-Related Arrangement Services), 5966 (Direct Marketing – Outbound Telemarketing Merchants), and 5967 (Direct Marketing – Inbound Telemarketing Merchants).
VISA RISK FEE	\$0.001 per Visa Transaction
VISA PARTIAL AUTHORIZATION NON PARTICIPATION FEE (PANPF) FOR AFD MERCHANTS	\$0.01 per authorization for Merchants in MCC 5542 (Automated Fuel Dispensers) who are required to support partial authorizations. PANPF is imposed on AFD transactions that do not support partial authorization. This fee was initially effective in April 2008 but was then delayed to allow merchants time to become compliant.

**MASTERCARD FEES:** The following fees result from charges assessed to SERVICERS from MasterCard and are subject to increases, decreases and additional new fees imposed by MasterCard.



Fee/Name	Fee/Description
MASTERCARD GATEWAY ACCESS FEE	\$0.004 per MasterCard authorization processed through Visanet.
MASTERCARD ASSESSMENT FEE	0.11% of the total dollar amount of all Sales Drafts.
MASTERCARD ASSESSMENT FEE (>=\$1,000)	0.01% fee assessed on the gross dollar amount of MasterCard Consumer and Commercial credit transactions, that are \$1,000 or greater.
MASTERCARD KILOBYTE FEE	\$0.0035 per Kilobyte.
MASTERCARD CROSS BORDER FEE (US)	0.40% of the total dollar amount of a transaction that is completed at a U.S. merchant location with a non U.S. or a non U.S. Territory issued card.
MASTERCARD CROSS BORDER FEE (Asia/Pacific)	0.80% of the total dollar amount of a transaction that is completed in the Asia/Pacific merchant location with a non Asia/Pacific issued card.
MASTERCARD CROSS BORDER FEE (Latin America/Caribbean)	0.80% of the total dollar amount of a transaction that is completed in the Latin American/Caribbean merchant location with a non Latin American/Caribbean issued card.
MASTERCARD CROSS BORDER FEE (Canada)	0.80% of the total dollar amount of a transaction that is completed at a Canadian merchant location with a non Canadian issued card.  Any combination of merchant location and issuer in USA, Puerto Rico, Virgin Islands, Guam, Marshall Islands and Northern Marianna Islands will be exempt from the Cross Border fee. Transaction on a MasterCard branded credit or debit card processed through MasterCard's clearing system in which the cardholder country code differs from the country code of the merchant; applicable to sale/purchase transactions, chargeback re-presentment and reversal transactions.
MASTERCARD NETWORK ACCESS AND BRAND USAGE (NABU) FEE	\$0.0185 per domestic acquired financial detail record.
MASTERCARD CARD NOT PRESENT AVS ACCESS FEE	\$0.0075 assessed on all MasterCard Card Not Present authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD AVS CARD PRESENT FEE	\$0.005 assessed on all MasterCard card present authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD ACCOUNT STATUS INQUIRY FEE - INTERREGIONAL	\$0.03 assessed on all Account Status Inquiry Service messages where the country code of the merchant is different from the country code of the cardholder. Account Status Inquiry Service transactions must be submitted for \$0 and are used to validate cardholder account numbers and other elements, such as CVC2 and AVS prior to obtaining an actual authorization. Effective June 14, 2011.
MASTERCARD ACCOUNT STATUS INQUIRY FEE - INTRAREGIONAL	\$0.025 assessed on all Account Status Inquiry Service messages where the country code of the merchant is the same as the country code of the cardholder. Account Status Inquiry Service transactions must be submitted for \$0 and are used to validate cardholder account numbers and other elements, such as CVC2 and AVS prior to obtaining an actual authorization. Effective June 14, 2011.
MASTERCARD PROCESSING INTEGRITY FEE	\$0.055 assessed on all MasterCard authorized transactions which are not followed by a matching MasterCard clearing transaction (or reversed in the case of a cancelled transaction). Car Rental (3351-3441, 7512), Hotel/Motel (3501-3999), 7011). Cruise Line / Steamship (4411) not subject to this fee. Effective August 1, 2011.
MASTERCARD MIP CONNECTION.	\$2,000 per month/per connection.
<b>DISCOVER NETWORK FEES :</b> The following fees result from charges assessed to SERVICERS from Discover Network and are subject to increases, decreases, and additional new fees imposed by Discover Network.	
Fee/Name	Fee/Description
DISCOVER DATA USAGE FEE	\$0.0185 per Discover Transaction.
DISCOVER NETWORK ASSESSMENT	0.10% of the total dollar amount of all Sales Drafts.
DISCOVER NETWORK INTERNATIONAL SERVICE FEE	0.55% of amount of Card Sales . Discover Network shall charge to Acquirers for Card Sales (excluding Cash Over) conducted at a Merchant location in the United States where the domicile of the Issuer of the Card used in the Card Sale is a country other than the United States, provided that such fee is not applicable to Card Sales with JCB and China Unionpay Cards.

6. **General Pricing Information:**

- a. Interchange Schedules. The interchange fees, assessments and qualifying criteria are set forth in Attachment I and annexed hereto (collectively, the "Interchange Schedules") may be changed from time to time as mandated by the Card Organizations. References in the Interchange Schedules to the "Program Guide" and "Application" shall mean the Bankcard Addendum.
- b. Visa and MasterCard Credit Transactions:
- (i) Billable transactions include: purchases, returns, declines, reversals, Terminal balancing totals and authorizations.
  - (ii) The Visa/MC transaction fee includes authorization, data capture and settlement.
  - (iii) The fees and charges set forth on this Schedule A are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person and will be collected by SERVICERS as set forth in the Bankcard Addendum.
  - (iv) Supplies provided at SERVICERS' then-current costs, plus a minimum supplies handling fee for shipping and handling per shipment.
  - (v) CUSTOMER shall be responsible for payment of all shipping costs associated with any equipment purchased, leased or maintained by SERVICERS under this Bankcard Addendum.
- c. Discover Network Credit Transactions:
- (i) Billing transactions include: purchases, returns, declines, reversals authorizations and Terminal balancing totals.
  - (ii) The Discover Network Processed Cards transaction fees include authorization, data capture and settlement.
  - (iii) The fees and charges set forth on this Attachment II are in additional to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person and will be collected by SERVICERS as set forth in the Bankcard Addendum.

Attachment I - Interchange Fees, Qualifications and Assessment Fees  
Other Card Services Supplement to Merchant Services Bankcard Addendum and Attachment II  
Debit Transactions Supplement to Merchant Services Bankcard Addendum and Attachment III  
Equipment Purchase and Rental Supplement to Merchant Services Bankcard Addendum.

**Attachment I to Schedule A to Merchant Services Bankcard Addendum**

**See attached [Interchange Qualification Matrix and Interchange Rate Schedule or Non-Qualified Rate Schedule]**

## Other Card Services Supplement to Merchant Services Bankcard Addendum and Attachment II to Schedule A

This Other Card Services Supplement to Merchant Services Bankcard Addendum and Attachment II to Schedule A (referred to herein as the "OCS Supplement") supplements the Merchant Services Bankcard Addendum (the "Bankcard Addendum") and Schedule A to which is attached and sets forth the terms applicable to FDS provision of the specified services for the Card transactions set forth below:

### OTHER CARD SERVICES SUPPLEMENT TO BANKCARD ADDENDUM:

1. **GENERAL:** CUSTOMER understands and acknowledges that FDS' sole responsibility with respect to Issuer Card transactions shall be to provide the services specified in this OCS Supplement.

In the event CUSTOMER has a separate agreement with an Issuer to accept such Issuer's cards ("Issuer Agreement") respective Issuer, all Chargeback and financial obligations including but not limited to fees and issues related thereto shall be governed by the terms of such Issuer Agreement. Notwithstanding the foregoing, in the event FDS is providing settlement services for Diners Club International and/or JCB transactions, FDS shall be responsible for providing such services pursuant to the terms of the Bankcard Addendum, except to the extent set forth in Subsection 13.1 thereof, and Section 5 of this OCS Supplement. CUSTOMER shall comply with all terms and conditions of the Issuer Agreement and the applicable rules, regulations, interpretations and other requirements of the respective Issuer and shall not seek authorization for or submit for processing or settlement hereunder any Issuer Card transactions at any time when CUSTOMER does not have in effect a valid Issuer Agreement with such Issuer. CUSTOMER agrees to notify FDS immediately upon the termination of any Issuer Agreement to which it is a party. Upon such termination, FDS shall have no further obligations hereunder to provide any services to CUSTOMER with respect to any transactions involving such Issuer Cards.

In the event CUSTOMER does not have a separate Issuer Agreement with a respective Issuer, the Issuer Card services to be provided hereunder shall be in accordance with the terms of the Bankcard Addendum and this OCS Supplement. Issuer Cards shall be considered "Cards" for purposes of Services provided by SERVICERS with respect to them and "Card Organizations" shall be deemed to include any Card Organizations set forth in this OCS Supplement for purposes of such Services.

### 2. ISSUER CONSENTS:

CUSTOMER shall be responsible for obtaining any operational consents required of Issuer to comply with procedures or practices contemplated by both CUSTOMER and FDS under this OCS Supplement.

### 3. AUTHORIZATION SERVICES ONLY:

In the event FDS is providing authorization services only for Issuer Card transactions as specified herein, CUSTOMER shall seek such authorization through FDS. In the event that FDS is not providing processing services for Issuer Card transactions as specified in this OCS Supplement, CUSTOMER shall be responsible for processing and submitting directly to the applicable Issuer for settlement of such Card transactions.

### 4. PROCESSING AND SUBMISSION TO ISSUERS:

In the event FDS is providing processing services for Issuer Card transactions as specified herein, CUSTOMER shall submit to FDS for processing all of CUSTOMER's Issuer Card transactions and FDS shall process such transactions and transmit them electronically to the applicable Issuer with a summary of such Card transactions

FDS does not warrant or bear responsibility for the performance of any Issuer in any way.

### 5. DISCOVER NETWORK PROCESSING PROVISIONS:

Acceptance of Discover Network Processed Cards: Except as provided in this Discover Supplement, the terms and conditions governing CUSTOMER's acceptance of Discover Network Cards and any other Card Organization Cards processed via Discover Network, including JCB and Diners Club International Cards, (collectively, "Discover Network Processed Cards") are as specified in the Bankcard Addendum. CUSTOMER agrees to follow the Bankcard Addendum concerning CUSTOMER's acceptance of Discover Network Processed Cards.

Any provision contained in the Bankcard Addendum which directs CUSTOMER to contact Discover Network for customer services or for any other inquiry or purpose is modified hereby to provide that CUSTOMER is to contact FDS for customer service or in relation to such inquiry or purpose.

### ATTACHMENT II TO SCHEDULE A:

American Express* <input checked="" type="checkbox"/>	Diners Club*** <input type="checkbox"/>	Discover® Network*** <input type="checkbox"/>
JCB*** <input type="checkbox"/>	Fleet* <input type="checkbox"/>	Voyager <input type="checkbox"/>
Wright Express* <input type="checkbox"/>		

\*Card processing services for these transaction types may be subject to a separate agreement.

\*\*SERVICERS will settle Voyager transactions directly to merchants. All other Card types listed in this Attachment shall be settled by the Issuer.

\*\*\*These are Discover Network Processed Cards which will be processed via Discover Network systems and subject to Discover Network Card Organization Rules; FDS will settle transactions for all Discover Network Processed Cards, unless CUSTOMER is classified by Discover Network as a Discover Direct Strategic Relationship as further described in Subsection 13.1 of the Bankcard Addendum.

1. FEES: SEE SCHEDULE A.

General Pricing Information:

Billable transactions include: purchases, returns, declines, reversals, authorizations & Terminal balancing totals.

Unless expressly set forth above, the Card transaction fee includes authorization and data capture. Settlement and payment for such Card types will be provided by the applicable Issuer, pursuant to the agreement between CUSTOMER and such Issuer.

The fees and charges set forth above are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person and will be collected by SERVICERS as set forth in the Bankcard Addendum.

General Pricing Information:

FIRST DATA SERVICES, LLC  
(FDS)

By: [Signature]

Title: SVP

Date: 2/20/12

STATE OF KANSAS  
(CUSTOMER)

By: [Signature]

Title: DIRECTOR, PROCUREMENT

Date: 2/27/12

## **Debit Transactions Supplement to Merchant Services Bankcard Addendum and Attachment III to Schedule A**

This Debit Transactions Supplement to Merchant Services Bankcard Addendum and Attachment II to Schedule A ("Debit Supplement") is entered into by and among the undersigned Customer ("CUSTOMER"), First Data Services, LLC ("FDS") and Bank of America, N.A. ("BANK") and supplements the Merchant Services Bankcard Addendum by and among CUSTOMER, FDS and BANK (the "Bankcard Addendum") and Schedule A to Bankcard Addendum to which it is attached and sets forth the additional terms applicable to FDS' provision of the specific services for the PIN debit Card transactions ("Debit Services"). Capitalized terms not defined below have the meanings set forth in the Bankcard Addendum. CUSTOMER understands and agrees that FDS is the service provider for Debit Services pursuant to the terms herein. The sponsoring member of the Debit Networks is BANK, or its successors or assigns ("Debit Network Bank"). Unless stated otherwise, (i) any reference to the Bankcard Addendum shall include the MSA (as defined in the Bankcard Addendum) and this Debit Supplement, with respect to the Debit Services, and (ii) any reference to this Debit Supplement shall include the MSA and the Bankcard Addendum.

**GENERAL:** Except and to the extent provided below in this Debit Supplement, the terms and conditions of the Bankcard Addendum (which may be amended from time to time, as provided in the MSA) shall govern CUSTOMER's acceptance of PIN debit Cards and FDS' provision of Debit Services to CUSTOMER.

### **DEBIT TRANSACTIONS SUPPLEMENT TO BANKCARD ADDENDUM:**

1. Until and unless otherwise authorized by FDS, CUSTOMER agrees to utilize FDS compatible Terminals/PIN pads or systems capable of processing all on-line PIN debit Card transactions, and to place them at its Locations. As between FDS and CUSTOMER, all software residing on these Terminals or systems is the sole property of FDS. Any software residing in CUSTOMER-owned Terminals or systems must be FDS compatible. CUSTOMER's placement of the Terminals or system at its Locations shall constitute acceptance of all terms and conditions set forth in this Debit Supplement. CUSTOMER understands and agrees that neither FDS nor BANK bear any responsibility whatsoever for CUSTOMER's-owned inoperative Terminals or Merchant Systems (or Software if applicable). In the case of an inoperative Terminal or Merchant System CUSTOMER shall consult CUSTOMER's warranty, or Terminal maintenance addendum, as applicable.
2. CUSTOMER agrees to submit all debit Card transactions and to abide by Applicable Law and the Card Organization Rules of the applicable PIN Debit Network(s) selected by CUSTOMER. CUSTOMER understands and agrees that neither FDS nor Debit Network Bank has any responsibility or liability for any debit Card transactions. CUSTOMER agrees to hold FDS and Debit Network Bank harmless from any and all claims, actions, proceedings and other liability which may arise pertaining to such debit Card transactions. In no event shall FDS or Debit Network Bank be liable for special, consequential or exemplary damages, including lost profits, revenues and business opportunities.
3. CUSTOMER understands and agrees that the Debit Services are being provided by FDS and not Debit Network Bank, and therefore Debit Network Bank shall have no liability whatsoever regarding the Services provided by FDS.
4. Upon notice to CUSTOMER, another Debit Network member may be substituted for Debit Network Bank under whose sponsorship this Supplement is performed. Upon substitution, such other Debit Network member shall be responsible for all obligations required of Debit Network Bank, including without limitation, as may be expressly required by applicable Card Organization Rules. Subject to Card Organization Rules, FDS and Debit Network Bank may assign or transfer this Supplement and their rights and obligations hereunder and may delegate their duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without the notice to or consent of CUSTOMER.
5. CUSTOMER further understands that any claims it may have regarding the Debit Services may not be offset against non PIN Debit sales.
6. CUSTOMER assumes all responsibility for paper copy of debit Card transactions, pursuant to the appropriate Debit Network rules.
7. The fees for the Debit Network used to process your transaction will be applied. Which Debit Network will be used will depend upon the availability of the Debit Network at the time of the transaction, whether a particular PIN Debit Card is enabled for a particular Debit Network, the routing requirements established by the Debit Networks and the Issuers, or other factors. CUSTOMER agrees that SERVICERS may, in their sole discretion, utilize any Debit Network available to SERVICERS for a given transaction.

### **ATTACHMENT III TO SCHEDULE A TO BANKCARD ADDENDUM:**

8. CUSTOMER shall be responsible for the following debit related fees: SEE SCHEDULE A.

#### **General Pricing Information:**

1. Billable transactions include: purchases, returns, declines, reversals, and authorizations.
2. The Debit Network transactions include authorization, settlement and sponsorship.
3. The fees and charges set forth above are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person, will be collected by SERVICERS as set forth in the Bankcard Addendum. In addition, CUSTOMER will also be charged the Debit Network fees on a per transaction per Debit Network basis, pursuant to Sections 8 and 9, above.



CUSTOMER AGREES THAT THE ABOVE-REFERENCED DEBIT NETWORK FEES ARE CONTROLLED BY SAID DEBIT NETWORK(S) AND ARE SUBJECT TO CHANGE BY THE DEBIT NETWORK(S) AND THEREFORE TO THE CUSTOMER AT ANY TIME. SERVICERS WILL USE COMMERCIALY REASONABLE EFFORTS TO NOTIFY CUSTOMER PRIOR TO ANY EFFECTIVE CHANGE.

NOTWITHSTANDING THE ABOVE, CUSTOMER WILL BE GIVEN WRITTEN NOTICE THIRTY DAYS BY SERVICERS PRIOR TO OTHER CHANGES IN FEES. CUSTOMER AGREES TO COMPLY WITH APPLICABLE LAW. CUSTOMER ACKNOWLEDGES THAT DEBIT TRANSACTIONS ARE GOVERNED BY DEBIT NETWORK REGULATIONS AS WELL AS FEDERAL AND STATE LAW, INCLUDING THE ELECTRONIC FUNDS TRANSFER ACT (KNOWN AS REGULATION E) AND AGREES TO BE COMPLIANT WITH SUCH REGULATIONS.

STATE OF KANSAS  
(CUSTOMER)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Chris Howe*  
*DIRECTOR, PROCUREMENT*  
*2/27/12*

FIRST DATA SERVICES, LLC  
(FDS)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Ge. Sykes*  
*SVP*  
*2/20/12*

RECEIVED

2012 FEB 27 A 11:02

DIVISION OF PURCHASES

## EQUIPMENT PURCHASE AND RENTAL SUPPLEMENT TO MERCHANT SERVICES BANKCARD ADDENDUM

This Equipment Purchase and Rental Supplement to Merchant Services Bankcard Addendum ("Equipment Supplement") is being entered into by and between First Data Services, LLC ("FDS") and the party identified on the signature panel of this Equipment Supplement ("CUSTOMER") and supplements the Merchant Services Bankcard Addendum ("Bankcard Addendum") to MSA (as defined in the Bankcard Addendum). In this Equipment Supplement, the words "we", "our" and "us" refer to FDS and its successors and assigns and the words "you" and "your" refer to CUSTOMER and its permitted successors and assigns. References to the MSA and Bankcard Addendum in this Equipment Supplement shall include this Equipment Supplement. Capitalized terms not defined in this Equipment Supplement are defined in the Bankcard Addendum.

Unless otherwise expressly provided in the MSA, this Equipment Supplement, (i) references to each Addendum and Supplement in the MSA shall be deemed to include this Equipment Supplement and (ii) references to an Addendum in the MSA shall be deemed to include the Bankcard Addendum and this Equipment Supplement. To the extent the terms of this Supplement directly conflict with the terms of the Bankcard Addendum or MSA, this Equipment Supplement shall control.

This Equipment Supplement governs any equipment that is rented to you on a month to month basis or that is sold to you by FDS under the purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("Equipment Documents"). If the Equipment Documents provide that your equipment is leased, then your lease is governed by a separate Addendum to the MSA with one of our Affiliates ("Lease Addendum"). Equipment rented to or purchased by you under the Equipment Documents is referred to in this Equipment Supplement as the "Equipment." THE EQUIPMENT IS NOT BEING SOLD OR RENTED TO YOU FOR HOME OR PERSONAL USE. Sales and rentals of equipment are made by FDS.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE BANKCARD ADDENDUM, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED HEREUNDER.

- 1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of the Bankcard Addendum as being purchased by you (individually and collectively, the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 7), except that any "Software" (as defined in Section 8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 8 of the Bankcard Addendum. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable Taxes, in accordance with the Equipment Documents or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable Taxes, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 5. (Maintenance and repair of merchant-owned equipment is your responsibility). Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.
- 2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively, the "Rental Equipment"), according to the terms and conditions of this Equipment Supplement. In addition, any Equipment ordered by and rented to you during the term of the Bankcard Addendum shall constitute Rental Equipment and be governed by the terms of this Equipment Supplement.
- 3. Effective Date and Term of Equipment Supplement.** This Equipment Supplement shall become effective on the first date you receive any piece of Equipment covered by this Equipment Supplement. This Equipment Supplement will remain in effect until all of your obligations and all of our obligations under the Bankcard Addendum have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation, or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Rental Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of the Bankcard Addendum and/or any other agreement then in effect with us for Card services. The provisions of this Equipment Supplement shall survive the termination of the Bankcard Addendum and continue until all Rental Equipment is returned or paid for.

Warranties, if any, for First Data POS Value Exchange<sup>SM</sup> Equipment or Software originate from the third party provider or manufacturer ("Vendor"). Materials or documents, if any, setting forth warranty terms, conditions, exceptions, exclusions and disclaimers will be contained within the First Data POS Value Exchange<sup>SM</sup> Equipment or Software packaging shipped from the Vendor. We do not make or provide any warranty with respect to the First Data POS Value Exchange<sup>SM</sup> Equipment or Software or any related services provided hereunder, and specifically disclaim all other warranties of any kind, express or implied, including warranties of merchantability, fitness for a particular purpose or noninfringement, arising out of or related to them, which are hereby excluded by agreement of the parties. We will only provide help desk support and related services for First Data POS Value Exchange<sup>SM</sup> Equipment purchased from us hereunder, and will not provide any such support or related services for any other products or equipment.

**4. Site Preparation. Installation & Maintenance.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

- Upon request, you must allow us (or our agents) reasonable access to the premises where Authorization terminals or other communications Equipment (e.g., printers) are or will be located.
- Any alterations required for installation of Authorization terminal(s) or other communications Equipment will be done at your expense.
- Only we or our agents can alter or modify Authorization terminal(s) or other communications equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding Equipment from loss, damage, unauthorized use, misuse or theft; we should be notified immediately if any of the foregoing occurs.
- If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of Equipment not returned upon termination of the Bankcard Addendum by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any equipment used in connection with the Services without first obtaining our permission.
- You must provide us with thirty (30) days' prior written notice to request the relocation of any Equipment.
- Should you require additional equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new equipment ordered, including download fees).

You shall ensure the following requirements have been met at each of your locations prior to any appointment for installation of the First Data POS Value Exchange <sup>SM</sup> Equipment: (i) retail counter prepared for the products – minimum dimensions for each component; (ii) retail counter grommet hole drilled if CPU box below the counter; (iii) retail counter has valid, working IP connectivity to Internet; (iv) network cable in place between POS stations if multi-lane; (v) specified power to POS retail counter; (vi) product boxes within short distance from POS retail counter. You shall comply with the following during installation of First Data POS Value Exchange <sup>SM</sup> Equipment: (i) access to POS retail counter with no interruptions by merchant staff; (ii) merchant store manager available for scheduling of installation services and sign-off.

**5. Payment of Amounts Due.**

(a) You agree to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.

(b) You hereby authorize us to collect all amounts due from you under this Equipment Supplement and any Equipment Documents by initiating debit entries for such amounts to the Settlement Account or by deducting such amounts from amounts due to you from us, BANK or PROVIDERS under any other Addenda to the MSA, as further described in Section 14 of the Bankcard Addendum.

(c) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any Taxes levied or based on such charges or on the Bankcard Addendum or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.

(d) Separate charges will apply for supplies; they are not included in monthly rental charges.

6. Use and Return of Equipment; Insurance.

(a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the Services. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

(b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.

(c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.

(d) You shall not assign your rights or obligations under this Equipment Supplement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.

(e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.

(f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.

(g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.

(h) For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 11(b), you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.

(i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.

(j) You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.

(k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).

(l) In order to return Equipment, you should:

- Call Customer Service for the address of the location to send the Equipment.
- The following information must be included within the shipping box:
  1. Company name, complete address and phone number.
  2. Name of person to contact if there are any questions.
  3. Your Merchant Account Number.
  4. Serial number of the Equipment (found on the underside of it).
- Please maintain proof of delivery documents for your records, and the Equipment serial number.

- Rental fees may be continued until Equipment is returned.

7. **Security Interest; Financing Statements.** You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price, and (b) all Rental Equipment and the related Software to secure payment of the monthly payments therefor and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.
8. **Software License.** Anything in this Agreement to the contrary notwithstanding, we retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any Person access to the Software without our prior written consent. Your obligations under this Section 8 shall survive the termination of the Bankcard Addendum.

You acknowledge that Software embodied in or provided in connection with the Data POS Value Exchange<sup>SM</sup> Equipment is owned and copyrighted by third party suppliers, including Hewlett-Packard Co. and Microsoft, Corp., and nothing in this Equipment Supplement confers any title or ownership of any such Software to You or shall be construed as a sale of any rights in any such Software to You. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Software.

9. **Limitation on Liability.** Notwithstanding any provision of this Equipment Supplement to the contrary, our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.
10. **Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct. To the extent applicable, CUSTOMER's liability will be subject to the Kansas Tort Claims Act.

In addition to your other obligations hereunder, You acknowledge and agree that the "use" and "operation" of the Equipment for which you will indemnify and hold us harmless shall include, but not be limited to, You loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

11. **Default; Remedies.**

(a) If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Equipment Supplement, or if any other default occurs under the Bankcard Addendum, any such event shall be a default hereunder.

(b) Upon the occurrence of any Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment Supplement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Equipment Supplement shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

STATE OF KANSAS  
(CUSTOMER)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FIRST DATA SERVICES, LLC  
(FDS)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A to MASTER SERVICES AGREEMENT

State of Kansas  
Department of Administration  
DA-146a (Rev. 04-11)

### CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas. Each party submits to the jurisdiction of the State of Kansas, District Court of Shawnee County, Kansas with respect to any such suit.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give as much written notice of termination as possible to contractor, and in any event no less than 45 days prior to the end of its current fiscal year. In such event, to the extent that State has incurred (or if contractor determines in its good faith determination that State is likely to incur) liability for extraordinary fees and costs under the contract beyond the current fiscal year (including, without limitation, for a Compromised Data Event as defined in the Bankcard Addendum), the State agrees to use best efforts to seek appropriations to fund such liability. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any termination penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions, to the extent any such acts or omissions are subject to the Kansas Tort Claims Act. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403).
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), to the extent applicable, the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."